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THE REVISED UNIFORM LIMITED PARTNERSHIP ACT IN SOUTH CAROLINA: A TOPICAL REVIEW OF SALIENT FEATURES

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The limited partnership form of business allows the passive investor to share in business profits and tax benefits while generally restricting his potential liability to the amount of his contribution. This insulation from liability, which is typically associated with the corporate form of business, combines with the favorable tax treatment associated with partnerships to make the limited partnership a desirable form in which to conduct business. In order to qualify for this special treatment, the enterprise must have one or more "general partners" who control the business affairs and who have unlimited liability for partnership debts and obligations. Other partners, called "limited partners," may restrict their liability but must refrain from participation in the management of the business.¹

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1. See generally Aslanides, Cardinali, Haynsworth, Lane & Niesar, *Limited Partnerships—What's Next and What's Left?*, 34 BUS. LAW. 257 (1978)[hereinafter cited as Aslanides]; Kessler, *The New Uniform Limited Partnership Act: A Critique*, 48 FORD-

In 1822, New York enacted the first limited partnership statute in the United States.² Other states soon followed New York's example by enacting statutes authorizing the creation of limited partnerships. Courts, however, tended to strictly construe the statutory privilege of limited liability without incorporation.³ In 1916, in an effort to establish a more satisfactory form of limited partnership⁴ and to promote uniformity, the National Conference of Commissioners on Uniform State Laws proposed the Uniform Limited Partnership Act (ULPA).⁵ The ULPA was subsequently enacted in every state except Louisiana.⁶

In 1976, the Commissioners adopted the Revised Uniform Limited Partnership Act (the Model Act) to modernize the original ULPA, while retaining the special character of limited partnerships as compared with corporations. As of May 31, 1985, twenty-four states have adopted the Model Act.⁷ The Model Act clarifies many ambiguities and fills interstices in the prior law. In addition, some important substantive changes and additions have been made. Of these, perhaps the most important is the upgrading of section 7 of the ULPA, which concerns the potential liability of limited partners resulting from the exercise of impermissible "control" over business affairs.⁸

On June 27, 1984, the Revised Uniform Limited Partnership Act was enacted into law in South Carolina.⁹ The South Caro-

HAM L. REV. 159 (1979); O'Neal, *Comments on Recent Developments in Limited Partnership Law*, 1978 WASH. U.L.Q. 669 (1978).

2. Act of Apr. 17, 1822, ch. 244, 1822 N.Y. Laws 259.

3. See *McGinnis v. Farrelly*, 27 F. 33 (D.N.Y. 1886); *Durant v. Abendroth*, 69 N.Y. 148 (1877); O'Neal, *supra* note 1, at 670; Note, *Partners and Limited Partners Under the Uniform Acts*, 36 HARV. L. REV. 1016 (1923).

4. See O'Neal, *supra* note 1, at 670.

5. See Kessler, *supra* note 1, at 159. The function of the National Conference of Commissioners on Uniform State Laws is to "promote uniformity in [state laws] on subjects where uniformity is desirable and practicable." Constitution of the National Conference of Commissioners on Uniform State Laws, art. 1, § 1.2, reprinted in HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 270 (1978).

6. See UNIF. LIMITED PARTNERSHIP ACT, 8 U.L.A. 93 (Supp. 1979) (Table of Jurisdictions Wherein Act Has Been Adopted).

7. Telephone Interview with John M. McCamb, Legislative Director of the National Conference of Commissioners on Uniform State Laws (May 31, 1985). The National Conference of Commissioners on Uniform State Laws is presently considering further amendments to the Model Act, which should be considered for South Carolina.

8. See *infra* note 73 and accompanying text.

9. See 1984 S.C. Acts 491 (codified at S.C. CODE ANN. §§ 33-42-10 to -2020 (Supp.

lina Revised Uniform Limited Partnership Act (RULPA), which is codified at sections 33-42-10 to -2020 of the South Carolina Code,¹⁰ was intended to supplant the ULPA which had been the law of South Carolina for many years. The South Carolina RULPA is essentially identical to the Model Act as amended in February 1983 by the executive committee of the National Conference.

The South Carolina RULPA clarifies, reorganizes, and restates prior limited partnership law. Moreover, there are numerous important changes from the South Carolina ULPA. Outlined below are the salient provisions of the South Carolina RULPA which are substantively different from the South Carolina ULPA in the areas of the formation of limited partnerships, the operations of limited partnerships, the liability of partners, and the relationships among partners. Technical corrections necessary to improve the Act in South Carolina are also discussed. Proposed amendments, as submitted to the South Carolina General Assembly, are incorporated into the discussion of suggested changes.

I. FORMATION OF LIMITED PARTNERSHIPS

Because the limited partnership is purely a creature of statute, strict compliance with statutory formalities is required as a precondition to formation.¹¹ While retaining this basic principle, the RULPA primarily affects the formation of limited partnerships by revising the name provisions, adding several prerequisites to formation, altering the certificate filing procedures and requirements, and expanding the acceptable forms of capital contributions.

A. *Name Requirements*

The RULPA makes various substantive changes in the law governing the naming of limited partnerships. First, the RULPA requires that the name of a limited partnership contain without

1984)).

10. S.C. CODE ANN. §§ 33-42-10 to -2020 (Supp. 1984).

11. Kessler, *supra* note 1, at 161.

abbreviation the words "limited partnership."¹² This requirement presents an interesting conflict with section 33-5-10(e) of the South Carolina Business Corporations Act, which provides that "no partnership, limited partnership . . . or other unincorporated business enterprise shall include in its name the words . . . 'limited', or any abbreviation of any such words."¹³

Additionally, the RULPA restricts limited partnerships from using a name which includes the name of any limited partner except under certain specified circumstances.¹⁴ This restriction does not represent a major departure from the ULPA, but does clarify the circumstances under which the use of the name of a limited partner is permissible. Specifically, the name of the limited partnership may not contain the name of a limited partner unless it is also the name of a general partner or the corporate name of a corporate general partner, or unless the business of the limited partnership had been operated under that name before the admission of that limited partner.¹⁵ The use in the name of any word or phrase implying a misleading purpose for the partnership is also prohibited.¹⁶

Furthermore, the RULPA codifies an existing practice of the South Carolina Secretary of State by prohibiting limited partnerships from using any name which is the same as or deceptively similar to the name of any corporation or other limited partnership organized under the laws of South Carolina or licensed or registered as a foreign corporation or foreign limited partnership in South Carolina.¹⁷ Finally, limited partnerships are now permitted to reserve a name by specified filing with the South Carolina Secretary of State.¹⁸ Reservation of a name generally protects the reserved name for a 120-day period.

12. S.C. CODE ANN. § 33-42-30(1)(Supp. 1984). See *infra* notes 110-13 and accompanying text for a discussion of a proposed amendment which would permit use of the customary abbreviation "LP" in the partnership name.

13. S.C. CODE ANN. § 33-5-10(e)(1976). This problem is addressed in a proposed amendment. See *infra* note 111.

14. S.C. CODE ANN. § 33-42-30(2)(Supp. 1984).

15. *Id.*

16. *Id.* § 33-42-30(3).

17. *Id.* § 33-42-30(4).

18. *Id.* § 33-42-40.

B. Prerequisites to Formation

As prerequisites to formation, the RULPA requires each limited partnership to appoint a registered agent for service of process and to specify a registered office, which may but need not be its place of business, where certain records must be maintained.¹⁹ While not expressly required by the RULPA, the South Carolina Secretary of State has instituted a practice, consistent with corporate practice, of refusing to accept limited partnership certificates for filing unless the appointed agent has as its normal business address the specified partnership office.²⁰

C. Filing Requirements

Section 33-42-210 of the RULPA simplifies to some extent the requirements and filing procedures for the certificate of limited partnership. The modified procedures are significant, however, and failure to strictly comply with all of the requirements of section 33-42-210 could result in untimely rejection of the certificate by the filing officer, or worse, in an ineffective filing which may render all partners generally liable for partnership obligations. Probably the most obvious change in the RULPA is that limited partnership certificates need only be filed centrally with the Secretary of State, abrogating the ULPA's requirement of filing in the county in which the partnership has its principal place of business.²¹

The certificate must set forth an acceptable name, identify the required agent, and specify the required office. Also, it must include the "business address of each partner" as opposed to the "residence address" formerly required by the ULPA.²² This requirement to include the business address of each partner raises a question with regard to the typical limited partner who invests in a limited partnership in his individual capacity. Arguably,

19. *Id.* § 33-42-50.

20. Telephone Interview with office of South Carolina Secretary of State (April 3, 1985).

21. Compare S.C. CODE ANN. §§ 33-43-30, 33-43-260(5)(1976)(requiring dual filings) with S.C. CODE ANN. §§ 33-42-210(b), 33-42-260 (Supp. 1984)(requiring central filing only). See *infra* note 109 for proposed clarifying amendment.

22. Compare S.C. CODE ANN. § 33-43-30(a)(iv)(1976)(requiring residence address) with S.C. CODE ANN. § 33-42-210(a)(4)(Supp. 1984)(requiring business address).

such a limited partner could list his residence as a business address for purposes of the partnership's operations since his residence would conceivably have a stronger "business" relationship to the partnership than would the place at which he earns his livelihood. Additionally, such a limited partner may not even have a true "business address." Until the definition of "business address" is clarified, the cautious approach would be to list both the business address and the residence address of each partner in the certificate.²³

Finally the RULPA provides that a limited partnership is formed at the time the certificate is filed with the Secretary of State, or at any later time specified in the certificate, so long as there has been substantial compliance with all the requirements of section 33-42-210.²⁴ Otherwise, the requisites for a certificate of limited partnership under the RULPA are essentially the same as those under the ULPA.

Procedurally, the RULPA provides that two signed copies of the certificate of limited partnership must be delivered to the Secretary of State.²⁵ The person executing a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. If found to conform to law, the certificate will be endorsed as "filed" and stamped with the day, month, and year of the filing.²⁶ One copy will be filed and the other will be returned to the person filing it or to his representative as evidence of filing.²⁷

Section 33-42-240 simplifies the requirements for execution of the certificate of limited partnership by deleting the requirement that each partner "swear to" the certificate.²⁸ The RULPA merely requires that the original certificate of limited partner-

23. See *infra* note 114 and accompanying text for a discussion of a proposed amendment which suggests substituting the phrase "mailing address" for "business address."

24. S.C. CODE ANN. § 33-42-210(b)(Supp. 1984).

25. *Id.* § 33-42-260(a).

26. Practitioners should be cautious to inquire about any unusual aspects in the filing procedures which might prevent speedy filing. The current filing fee is five dollars for the original certificate and two dollars for each additional certified true copy. Telephone Interview with office of South Carolina Secretary of State (April 3, 1985).

27. This same procedure is followed for the filing of certificates of amendment or cancellation or of any judicial decree of amendment or cancellation. S.C. CODE ANN. § 33-42-260 (Supp. 1984).

28. Compare S.C. CODE ANN. §§ 33-43-30(1)(a), 33-43-260(1)(b)(1976) with S.C. CODE ANN. § 33-42-240(a),(c)(Supp. 1984).

ship be signed by all partners named therein.²⁹ The South Carolina Secretary of State's office has acknowledged that it will accept for filing certificates which are merely manually executed, without probate forms or acknowledgments before a notary public.³⁰ The RULPA further provides that any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission or increased contribution of a partner must specifically describe the admission or increase.³¹ This requirement is designed to prevent general partners from abusing "blanket" powers of attorney for the execution of all certificates.³²

D. Capital Contributions

The acceptable forms of capital contributions are expanded by the RULPA, which permits general partners and limited partners to contribute past or future services in return for partnership interests.³³ This change represents a significant expansion of the ULPA, which limited acceptable contributions to "cash or other property."³⁴ The obvious advantage of this expansion is added flexibility in the entity's capital structure.

II. OPERATIONS OF LIMITED PARTNERSHIPS

The RULPA modifies the statutory governance of the operation of limited partnerships with regard to partnership records, amendments to and cancellation of the partnership certificate, formalistic prerequisites to transferring partnership property, and distributions and allocations from the partnership.

29. S.C. CODE ANN. § 33-42-240(a)(1)(Supp. 1984).

30. Telephone Interview with office of South Carolina Secretary of State (April 3, 1985).

31. S.C. CODE ANN. § 33-42-240(b)(Supp. 1984).

32. See Aslanides, *supra* note 1, at 269.

33. S.C. CODE ANN. § 33-42-810 (Supp. 1984). Practitioners should be aware that the receipt of a partnership interest in return for services is a taxable event. See Treas. Reg. § 1.721-1(b)(1)(1984).

34. See S.C. CODE ANN. § 33-43-50 (1976).

A. Record-Keeping Requirements

Section 33-42-60³⁵ of the RULPA expressly requires that each limited partnership maintain at its registered office³⁶ the following items: (a) a current list of the full names and last known business addresses of all partners set forth in alphabetical order; (b) a copy of the certificate and all amendments thereto and powers of attorney used in connection therewith; (c) copies of the partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years; (d) a copy of the current partnership agreement (if different from the certificate); and (e) copies of any partnership financial statements for the three most recent years.

The requirement that these records and documents be maintained at the partnership's registered office presents a complication if the partnership wishes to appoint an independent agent³⁷ to satisfy the requirements of section 33-42-50(2). If such an independent agent is appointed, according to the Secretary of State's interpretation of the RULPA,³⁸ the normal business address of the independent agent would have to be the same as the registered office specified in the limited partnership certificate; therefore, the limited partnership would be required to keep all of the records and documents listed in section 33-42-60 at the independent agent's office. Some of these records and documents may have sensitive contents, and updating the records while they are held by the independent agent could create significant inconvenience.³⁹

The limited partners' right to inspect all partnership records and documents is expressly codified in the RULPA. Section 33-42-60 sets forth the basic right of each partner to access those records which are required to be maintained at the part-

35. S.C. CODE ANN. § 33-42-60 (Supp. 1984). General Partners may also be required to maintain additional records for tax purposes, *e.g.*, if the partnership is a "tax shelter" requiring registration under I.R.C. § 6111 (1984). *See* I.R.C. § 6112 (1984).

36. *See supra* notes 19-20 and accompanying text (requirement of a registered office).

37. *E.g.*, an attorney or independent professional agency, such as one of the many corporations which serve in this capacity for a fee.

38. *See supra* notes 19-20 and accompanying text.

39. For this reason, organizing attorneys should be cautious about agreeing to act as the agent or office of a limited partnership.

nership's registered office. Section 33-42-450 conceptually expands on the types of records and documents to which limited partners have access by granting limited partners the right to:

obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable.⁴⁰

Given the breadth of this language, it is virtually inconceivable that general partners could deny any limited partner access to any document or record even remotely related to the business and condition of the limited partnership.

The RULPA also requires that the general partners "promptly deliver or mail a copy of the certificate of limited partnership and each certificate [of amendment or cancellation or any judicial decree of amendment or cancellation]⁴¹ to each limited partner"⁴² after filing with the Secretary of State, "unless the partnership agreement provides otherwise."⁴³ Formerly, delivery to the limited partners was common good practice, but it has now been expressly incorporated into the RULPA. In most cases, a copy of the certificate is the only representation of a limited partner's interest in the limited partnership.

B. Amendment and Cancellation Procedure

Each general partner in a limited partnership now has a statutory obligation under the RULPA to file an amendment to

40. S.C. CODE ANN. § 33-42-450(2)(Supp. 1984).

41. An amendment has been proposed to add the words appearing in the brackets to § 33-42-290, since the omission of the words apparently represents a clerical error in the drafting of the legislation. See *infra* note 124 (text of proposed corrective amendment).

42. S.C. CODE ANN. § 33-42-290 (Supp. 1984).

43. *Id.* Practitioners should consider taking advantage of the right to alter this requirement in the agreement, especially with regard to admission amendments for large or "public" partnerships anticipating frequent expansion or turnover. Additionally, the delivery of a copy of the original certificate to each limited partner should enhance compliance, when necessary, with the legend requirements for exemption from registration of securities with the South Carolina Securities Commission under its Rule 113-21. Such legend should be placed on the face of the certificate. See S.C. Securities Comm'n Rule 113-21(E)(1983).

the partnership certificate upon the occurrence of certain events which are deemed so central to the function of the partnership that prompt changes in the certificate are required.⁴⁴ Among the events which require such amendments are the change in the amount or character of contributions or of any partner's obligation to make contributions to the capital of the partnership, the admission of new partners or the withdrawal of existing partners, the continuation of the business after the withdrawal of a general partner, the recognition of the falsity of any statement in the certificate (either because it was false when made or because it became false as a result of a change of circumstances or arrangements), and the change of address of any limited partner.⁴⁵ A grace period of thirty days is allowed for the filing of all required amendments except the change of address of a limited partner, which has a grace period of twelve months.⁴⁶ The RULPA further provides that certificates of amendment need only be signed by one general partner and by each other partner designated in the certificate as a new partner or one whose contributions are being increased by the amendment.⁴⁷

Section 33-42-230 of the RULPA clarifies the ULPA provisions concerning the cancellation of a certificate by providing that the cancellation should be filed upon the commencement of winding up of the limited partnership, as opposed to the ULPA's ambiguous requirement that the cancellation be filed "when the partnership is dissolved."⁴⁸ The certificate of cancellation must be signed by all general partners and must be filed in the office of the Secretary of State. It must set forth the name of the limited partnership, the date its certificate of limited partnership was filed, the reason for filing the certificate of can-

44. S.C. CODE ANN. § 33-42-220 (Supp. 1984); REVISED UNIF. LIMITED PARTNERSHIP ACT § 202 comment, 6 U.L.A. 232 (Supp. 1985). The RULPA alters the ULPA by confining the obligation to file the certificate of amendment to general partners only. Cf. S.C. CODE ANN. §§ 33-43-70, 33-43-270 (1976). The certificate of amendment is to be filed in the office of the Secretary of State and must set forth the name of the limited partnership, the date of filing of the original certificate (for identification purposes), and the amendment to the certificate. S.C. CODE ANN. § 33-42-220(a) (Supp. 1984).

45. S.C. CODE ANN. § 33-42-220(b) (Supp. 1984). Practitioners should consider the interrelationship of § 33-42-220(b)(4) with §§ 33-42-610 and 33-42-1410(b). See *infra* notes 115, 120 and accompanying text.

46. S.C. CODE ANN. § 33-42-220(b) (Supp. 1984). See *infra* note 104.

47. S.C. CODE ANN. § 33-42-240 (Supp. 1984).

48. S.C. CODE ANN. § 33-43-250(1) (1976).

cellation, the effective date of cancellation (if cancellation is not to be effective upon the filing of the certificate), and such other information as the general partners filing the certificate shall determine.

In the event that any person whose signature is necessary to file an amendment or cancellation of the certificate fails or refuses to execute the required documents, the amendment or cancellation may be accomplished by petitioning "the court of common pleas"⁴⁹ to direct the Secretary of State to record the appropriate amendment or cancellation of the certificate.⁵⁰ The statute does not specify which "court of common pleas" the affected partner should petition. Two distinct possibilities seem to exist: the statute may be interpreted to mean either the court in the county in which the limited partnership has its principal place of business, or the court for Richland County, where the office of the Secretary of State is located. Standing to petition the court for amendment or cancellation is limited to "any other partner [aside from the one failing or refusing to execute the certificate], and any assignee of a partnership interest, who is adversely affected by the failure or refusal."⁵¹

C. *Transferring Partnership Property*

A limited partnership owning real property in South Carolina is required by the RULPA to record an affidavit of general partners' authority as a prerequisite to transferring any interest in real property (presumably but not expressly including the granting of a mortgage on such property) in South Carolina.⁵² This provision, the only nonuniform section of the South Carolina RULPA, is found neither in the Model Act nor in the versions of the Model Act which have been enacted in other states.

49. Because South Carolina has no constitutional court called the "court of common pleas" and because this section fails to identify the appropriate county in which to file, an amendment to § 33-42-250 of the South Carolina Code has been proposed to change this language by calling for recourse to the circuit court in the county in which the partnership office is located. *See infra* note 122 and accompanying text (text of proposed amendment).

50. S.C. CODE ANN. § 33-42-250 (Supp. 1984).

51. *See id.*

52. S.C. CODE ANN. § 33-42-300 (Supp. 1984). S.C. Representative David M. Beasley has proposed a bill to eliminate this section from the South Carolina RULPA. *See infra* note 125 and accompanying text.

The affidavit must be filed “in the office of the county where the index to deeds for the property is located.”⁵³

The filing of this affidavit does not affect the legal existence of the partnership or the status of the limited partners, and the facts described in the affidavit must be conclusively presumed in favor of the partnership and against any grantee from the partnership. The affidavit must be indexed in both the grantor and grantee indexes for deeds. It may be executed by “an agent or fiduciary of the partnership” without evidence of authority as a prerequisite to its recordation in the county records, but the statute does not otherwise describe precisely who must execute the affidavit. Since the statute requires the *partnership* to file the affidavit, its execution by the partnership (as opposed to its execution merely by a general partner or some other person) should be sufficient and may be required; the statute is, however, ambiguous on this point. The affidavit need only contain the name of the partnership, the place or places where the partnership’s certificate is filed, and the name or names of the general partners who are authorized to sign documents relating to the property on behalf of the partnership. The customary courtesy filing of the partnership’s certificate in the appropriate county records may satisfy the RULPA filing requirements if the certificate is “sworn to” by the executing partner(s) and otherwise contains the required information. Given the simplicity of the required affidavit and the nonuniformity of this provision, however, the cautious approach would be to always file an instrument denominated an “affidavit of general partners’ authority” in the appropriate county records even if the certificate has been filed as a courtesy to title abstractors. The penalty for, or other adverse result of, failure to file the required affidavit is not specified by the RULPA and should be a matter of concern to practitioners.

D. Distributions and Allocations

From the individual partners’ perspective, the treatment of the allocation of profits and losses and of the distribution of cash or other assets of a limited partnership under the RULPA

53. S.C. CODE ANN. § 33-42-300 (Supp. 1984).

represents a significant change in the law. In the normal course of the partnership's operation, unless otherwise provided by the partnership agreement, profits and losses are required to be allocated,⁵⁴ and cash or other assets are required to be distributed,⁵⁵ based on the value (as stated in the partnership's certificate) of the contributions made by each partner to the extent that they have been received by the partnership and have not been returned to such partners. These provisions establish a sensible manner of sharing profits and losses and distributing assets in the absence of agreement and are a helpful change in the law. Under the ULPA, these matters would have been governed by the Uniform Partnership Act (UPA), resulting in equal sharing even though contributions to the partnership may have been significantly unequal.⁵⁶

Under the RULPA, any partner may demand, upon withdrawal, to receive any distribution to which he is entitled under the partnership agreement as of the time of withdrawal, and, unless otherwise provided in the partnership agreement, to receive within a reasonable time after withdrawal the fair value of his interest in the partnership.⁵⁷ This fair value is determined as of the date of withdrawal and is based upon the partner's right to share in distributions from the partnership. Notably, no reference is made to "fair market value," presumably because there is generally no available market for limited partnership interests. Since no definition of "fair value" is supplied, the use of this term seems at best ambiguous, and at worst disruptive and likely to result in litigation.

The RULPA also codifies the provision commonly found in limited partnership agreements that precludes the right to demand partition and distribution in kind.⁵⁸ Specifically, the RULPA provides that, unless the certificate provides otherwise, a partner has no right to demand and receive any distribution

54. *Id.* § 33-42-830.

55. *Id.* § 33-42-840.

56. See Gregory, *The Financial Provisions of the Revised Uniform Limited Partnership Act: Articles 5 and 6*, 9 ST. MARY'S L.J. 479 (1978). This section should not have a substantial practical impact since a cautious practitioner should almost always specify in the partnership agreement the manner of sharing profits and losses. *Id.* at 483. See also I.R.C. § 704(b), (c)(1985); proposed Treas. Reg. § 1.704-1(b).

57. S.C. CODE ANN. § 33-42-1040 (Supp. 1984).

58. *Id.* § 33-42-1050.

from a limited partnership in any form other than cash. Similarly, except as provided in the partnership agreement, a partner may 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 him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership."⁵⁹

Finally, once a partner becomes entitled to receive a distribution, he will by virtue of the RULPA attain the status of a creditor of the limited partnership with respect to the distribution.⁶⁰ Any partner who becomes a creditor in this manner will be entitled to all the remedies available to a creditor under the laws of this state. Thus, the partner's right to receive a distribution, as between the partners, is not subject to the equity risks of the enterprise. Also, the RULPA abrogates the ULPA's extraordinary remedy of dissolution in the event of an unsuccessful demand for return of a capital contribution.⁶¹

III. LIABILITIES OF PARTNERS

The most pervasive modifications to prior law accomplished by the adoption of the RULPA in South Carolina concern the partner's exposure to liability either to the partnership or to its creditors. Obviously, the limited partner's retention of restricted liability is at the heart of the formation of a limited partnership. One major deficiency of the ULPA was the uncertainty of whether limited partners truly had limited liability. In an effort to resolve this uncertainty, virtually all provisions of the ULPA respecting partners' potential liability have been extensively altered, and the concepts of partners' liability have been clarified and, in most instances with regard to limited partners, restricted.⁶²

As a general rule, limited partners are not liable to the partnership or to the partnership's creditors for any amount in ex-

59. *Id.*

60. *Id.* § 33-42-1060.

61. See S.C. CODE ANN. § 33-43-170(4)(a)(1976); REVISED UNIF. LIMITED PARTNERSHIP ACT § 606 comment, 6 U.L.A. 262 (Supp. 1985).

62. S.C. CODE ANN. § 33-42-430(b)(Supp. 1984) should provide particular comfort to attorneys who are required to render opinions regarding the potential liabilities of limited partners in syndicated transactions. See *infra* note 73 and accompanying text.

cess of their respective capital contributions required under the partnership certificate. Under the RULPA, however, a limited partner may become liable to the partnership or to the partnership's creditors in a number of situations. Specifically, a limited partner may be held liable for:

A. His interest in the undistributed profits of the partnership.⁶³

B. The return of capital contributions to such limited partner unless the partnership's certificate had been amended of record as contemplated by section 33-42-820(b) of the RULPA⁶⁴ to reflect a reduction in the contributions of capital to the partnership as the result of such return of capital prior to the time any unsatisfied creditor extended credit to the partnership. Additionally, under section 33-42-1080 of the RULPA, a limited partner who receives a distribution from the partnership may be liable to the partnership to the extent of such distribution plus interest if necessary to discharge the partnership's liability to certain creditors. For distributions made without violation of the RULPA or the partnership agreement (and presumably but not expressly the certificate), this liability continues for a period of one year.⁶⁵ For distributions made in violation of the RULPA or the partnership agreement (and presumably but not expressly the certificate), liability continues for six years.⁶⁶ Only creditors which extended credit to the partnership while the contributions were held by the partnership can claim benefit under this provision.⁶⁷ Limited partners no longer are deemed to hold such distributions expressly "in trust" as they were under the ULPA.⁶⁸

C. The general obligations or liabilities of the partnership if the limited partner:

63. S.C. CODE ANN. § 33-42-1070 (Supp. 1984) provides that "[a] partner may not receive a distribution 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, exceed the fair value of the partnership assets."

64. S.C. CODE ANN. § 33-42-820(b)(Supp. 1984)(contemplating an amendment to compromise required contributions only with the consent of all partners).

65. *Id.* § 33-42-1080(a).

66. *Id.* § 33-42-1080(b).

67. *Id.* § 33-42-1080(a).

68. The South Carolina ULPA stated at § 33-43-180(2) that "[a] limited partner holds as trustee for the partnership (a) specific property stated in the certificate as contributed by him but which was not contributed or which has been wrongfully returned and (b) money or other property wrongfully paid or conveyed to him on account of his contribution." S.C. CODE ANN. § 33-43-1080(2)(1976).

(1) Is also a general partner.⁶⁹

(2) Knowingly allows his name to be impermissibly used in the name of the partnership, but only to creditors who extend credit to the partnership without actual knowledge that the limited partner is not a general partner.⁷⁰

(3) Executes the partnership certificate (or, presumably but not expressly, an amendment of record thereto), or causes another person to execute the same on his behalf, when he knows of a false statement therein at the time of execution, but only to a person who suffers loss by reliance on such false statement.⁷¹

(4) Otherwise acts as or holds himself out to others to be a general partner.⁷²

(5) Takes part in the control of the business of the partnership. Section 33-42-430(b) of the RULPA, however, expressly permits limited partners to take at least the following actions without being deemed to have participated in such control of the business:⁷³

(a) being a contractor for or an agent or employee of the partnership or of a general partner;

(b) consulting with and advising a general partner with respect to the business of the partnership;

(c) acting as surety for the partnership;

(d) approving or disapproving an amendment to the partnership agreement (or, presumably but not expressly, to the certificate); or

(e) voting on one or more of the following matters: (i) the dissolution and winding up of the partnership; (ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the partnership other than in the ordinary course of its business; (iii) the incurrence of in-

69. S.C. CODE ANN. § 33-42-430(a)(Supp. 1984).

70. *Id.* § 33-42-430(d). This provision does not apply under circumstances permitted by *id.* § 33-42-30(2)(i). *Cf.* S.C. CODE ANN. § 33-43-60(2)(1976).

71. S.C. CODE ANN. § 33-42-270 (Supp. 1984). *Cf.* S.C. CODE ANN. § 33-43-70 (1976).

72. *Ex parte Wilson*, 84 S.C. 444, 66 S.E. 675 (1910). *See also* S.C. CODE ANN. § 33-42-430(a)(Supp. 1984).

73. S.C. CODE ANN. § 33-42-430(b)(Supp. 1984). This “safe harbor” provision represents probably the most significant change in the RULPA. It is designed to delineate clearly the situations in which a limited partner may participate in the business of the partnership without losing his limited liability. *See infra* note 118 and accompanying text concerning a proposed addition to the “safe harbor.”

debtedness by the partnership other than in the ordinary course of its business; (iv) a change in the nature of the business; or (v) the removal of a general partner (but not necessarily the election of a substitute general partner).

Section 33-42-430(c) of the RULPA provides that the possession or exercise by limited partners of rights other than those expressly permitted by section 33-42-430(b) does not necessarily constitute participation in the control of the business of the partnership.⁷⁴ Thus, limited partners may be granted other similarly restrictive rights or may participate in the partnership's business in other limited capacities without being deemed to participate in control. Except for section 33-42-430 of the RULPA, however, virtually no authority exists in South Carolina, and very little authority exists in other jurisdictions, concerning acts which constitute taking part in the control of the business of the partnership.⁷⁵ Accordingly, extreme caution should be used in granting additional rights to limited partners, or in allowing them to participate in business, except as expressly permitted in the section 33-42-430(b) "safe harbor" provision. However, if a limited partner's participation in the control of the business of the partnership is not "substantially the same as"⁷⁶ the exercise of the powers of a general partner, such limited partner will become liable only to those persons who transact business with the partnership with actual knowledge of the limited partner's participation in such control.

The RULPA restates and clarifies the ULPA provision which protected a person who erroneously believes that he is a limited partner by allowing him to renounce his interest.⁷⁷ The RULPA requires that the ostensible limited partner must have believed in good faith that he was a limited partner. It also clarifies an ambiguity in prior law by permitting the ostensible limited partner to withdraw prospectively from the enterprise with-

74. S.C. CODE ANN. § 33-42-430(c)(Supp. 1984).

75. See, e.g., Feld, *The "Control" Test for Limited Partnerships*, 82 HARV. L. REV. 1471, 1474 (1969); Feldman, *The Limited Partner's Participation in the Control of the Partnership Business*, 50 CONN. B.J. 168 (1976); Pierce, *Limited Partner Control and Liability Under the Revised Uniform Limited Partnership Act*, 32 SW. L.J. 1301 (1979).

76. This language provides a new test by which to determine liability of limited partners to third parties, restricting such liability as outlined above.

77. S.C. CODE ANN. § 33-42-440 (Supp. 1984).

out renouncing any of his current interest in the partnership.⁷⁸ To accomplish such favorable withdrawal, however, the ostensible limited partner either must cause an appropriate certificate or amendment to be filed showing him to be a limited partner, or must withdraw from future equity participation by filing with the Secretary of State a certificate declaring his withdrawal. In any event, the ostensible limited partner will remain liable to third parties who believed in good faith that the ostensible limited partner was a general partner and who transacted business with the enterprise before these remedial actions were taken.

The specific section of the RULPA which expresses the general liability of general partners is section 33-42-630(b). This section was amended in the Model Act as a result of an Internal Revenue Service objection that the uniform provisions as originally proposed might have been interpreted to permit all general partners to limit their liability to third parties.⁷⁹ The RULPA provides that the liability of general partners to third parties generally may not be restricted, but their liability to the partnership and to other partners may be restricted under the partnership agreement.⁸⁰ As a result of the inclusion of section 33-42-630(b), the South Carolina RULPA, at least in this respect, should be deemed to correspond to the ULPA for purposes of meeting the requirements of section 301.7701-2 of the United States Treasury Procedure and Administrative Regulations, which describes the characteristics by which an entity is classified for tax purposes as a partnership rather than a corporation.⁸¹

78. The ULPA formerly required that, upon ascertaining the mistake, the person who believed himself to be a limited partner had to promptly renounce his interest in the profits of the business or other compensation by way of income. S.C. CODE ANN. § 33-43-120 (1976).

79. REVISED UNIF. LIMITED PARTNERSHIP ACT § 403 comment, 6 U.L.A. 254 (Supp. 1984).

80. S.C. CODE ANN. § 33-42-630(b)(Supp. 1984).

81. Treas. Reg. § 301.7701-2 (1985) provides that the classification of an entity as a partnership or as an association that is taxable as a corporation depends upon the presence or absence of the following characteristics: continuity of life, centralization of management, limited liability, and free transferability of interests. A limited partnership is not treated as an association taxable as a corporation unless the characteristics normally attributable to a corporation predominate over noncorporate characteristics. See *Larson v. Comm'r*, 66 T.C. 159 (1976), *acq.* in result 1979-1 C.B. 1.

When the Model Act was initially promulgated, the "safe harbor" provision of § 303(b), codified at S.C. CODE ANN. § 33-42-430(b)(Supp. 1984), see *supra* note 73 and

Section 33-42-280 of the RULPA is tangentially related to the liability of partners. It provides that the filing of the certificate with the Secretary of State, despite the contents thereof, is notice to third parties *only* that the partnership is a limited partnership and that the limited partners have limited liability. This section provides expressly that the filing of the certificate is not notice of "any other fact." Thus, any additional restriction of the liability of any partner is not cognizable merely as a result of a statement in the certificate. The purpose of this section is to protect creditors and to discourage the practice of placing extraneous information in the certificate to establish a fact as a matter of public record.⁸²

IV. RELATIONSHIPS AMONG PARTNERS

The RULPA modifies existing law regarding the relationship of partners to each other and to the partnership in the areas of voting and consensual rights, assigning interests in the

accompanying text, was criticized as risking centralization of management, which would increase the chance that limited partnerships formed under the new Act would be subjected to taxation as corporations. Of particular concern was the section which states that a limited partner has the right to vote on the removal of a general partner. *See* S.C. CODE ANN. § 33-42-430(b)(Supp. 1984).

With respect to this issue of partnership characterization, regulations amending § 301.7701-2, which were published on April 26, 1983, provide comfort. T.D. 7889, 1983-1 C.B. 362. As amended, § 301.7701-2(a)(5) provides that all references in that section to the Uniform Limited Partnership Act shall be deemed to refer both to the Uniform Limited Partnership Act (adopted in 1916) and to the Revised Uniform Limited Partnership Act (adopted in 1976). Notably, the Internal Revenue Service determined that the versions of the RULPA recently enacted by Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Maryland, Massachusetts, Michigan, and Montana correspond to the Model Act (which itself corresponds to the ULPA) for purposes of § 301.7701-2 of the Regulations. Rev. Rul. 84-80, 1984-1 C.B. 275; Rev. Rul. 84-180, 1984-53 I.R.B. 9. Because the South Carolina RULPA is similar to the RULPA versions of these states, and more restrictive than some, the IRS is likely to rule favorably upon it with respect to partnership characterization for tax purposes.

Each general partner should be aware that, under § 33-42-240(c) of the RULPA, his execution of a partnership certificate (including amendments and cancellations) constitutes an affirmation under penalties of perjury that the facts in such certificate are true. Apparently (but not conclusively), a limited partner is not subject to perjury for execution of a certificate under the RULPA. General partners are exposed to numerous other statutorily imposed liabilities. *See, e.g.*, S.C. CODE ANN. §§ 33-42-220(c), 33-42-270, 33-42-640, 33-42-820, 33-42-1020, 33-42-1080 (Supp. 1984). *See also* S.C. CODE ANN. §§ 33-41-330 to -370 (1976).

82. *See* Aslanides, *supra* note 1, at 269.

partnership, bringing actions on behalf of the partnership, transacting business with the partnership, and terminating partners' relationships.

A. Voting Rights

The RULPA clarifies prior law by specifying that limited partners are not granted the right to vote as a separate class,⁸³ and that general partners have the right to vote with limited partners or as a separate class. The right to vote and the basis on which votes will be counted must be provided in the partnership agreement. However, unless otherwise provided in the partnership agreement, the consent of all partners is required for the admission of any additional limited partners.⁸⁴ Similarly, additional general partners may be admitted only with the specific written consent of all partners.⁸⁵ General partners who are also limited partners are permitted to possess and exercise all of the rights and powers, and are subject to the same restrictions, as are other limited partners.⁸⁶

B. Assignments of Interests

The RULPA expands prior law⁸⁷ regarding the assignment of interests to allow the partnership agreement to provide for unlimited restrictions on the right to assign partnership interests⁸⁸ and to provide that upon the assignment of all of a partner's interests, the assignor ceases to be a partner.⁸⁹

C. Derivative Actions

Article 10 of the RULPA gives limited partners the right to bring a derivative action on behalf of the partnership in a man-

83. S.C. CODE ANN. § 33-42-650 (Supp. 1984). See REVISED UNIF. LIMITED PARTNERSHIP ACT § 405 comment, 6 U.L.A. 256 (Supp. 1985).

84. S.C. CODE ANN. § 33-42-410 (Supp. 1984).

85. *Id.* § 33-42-610. See *infra* note 115 and accompanying text for proposed amendments to alter this unanimity requirement. See also *infra* note 120 for related comments.

86. S.C. CODE ANN. § 33-42-640 (Supp. 1984).

87. See S.C. CODE ANN. § 33-43-200 (1976).

88. S.C. CODE ANN. § 33-42-1220 (Supp. 1984). This provision is subject to the general law concerning restraints on alienation.

89. See REVISED UNIF. LIMITED PARTNERSHIP ACT § 702, 6 U.L.A. 264 (Supp. 1985).

ner similar to the right of shareholders to bring actions on behalf of a corporation.⁹⁰ The creation of the derivative action in the limited partnership area represents a significant addition to prior law.

D. Transacting Business

Subject to the partnership agreement, the RULPA provides that partners may make loans to or transact other business with the partnership.⁹¹ Such partners, subject to general law affecting or subordinating their rights, have the same rights and obligations as third party creditors or obligees. The RULPA abrogates the special fraudulent conveyance provisions of the ULPA, relying exclusively upon the general fraudulent conveyance laws of the state.⁹²

E. Termination of Interests

The RULPA significantly revises prior law⁹³ concerning the termination of the partners' relationship. The RULPA adds as causes for dissolution (in addition to the retirement, death, or insanity of a general partner), the withdrawal of a general partner, the assignment of all of the general partner's interest, the occurrence of serious financial problems to a general partner (such as bankruptcy or insolvency), and, for nonnatural persons which are general partners, the dissolution or termination of

90. S.C. CODE ANN. §§ 33-42-1810 to -1840 (Supp. 1984). Cf. S.C. CODE ANN. § 33-3-30 (Supp. 1984). See generally Reuschlein, *Limited Partner Derivative Suits*, 9 ST. MARY'S L.J. 443 (1978), for a discussion drawing an analogy to FED. R. CIV. P. 23.1. Practitioners should also note the requirement of naming all partners in a partnership suit. See, e.g., *Marvil Properties v. Fripp Island Dev. Corp.*, 273 S.C. 619, 258 S.E.2d 106 (1979). Rule 4 of the South Carolina Rules of Civil Procedure (to become effective July 1, 1985) fails to alter this requirement but does delete the requirement of service at the business address. Rule 4(d)(3) now permits service upon a partnership by delivery of a copy of the summons and complaint to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process, and also, if the agent is one authorized by statute to receive service and the statute so requires, by mailing a copy to the defendant. Cf. S.C. CODE ANN. § 33-42-50(2)(Supp. 1984) (requiring appointment of agent for service of process but not specifically requiring mailing of copy to partnership).

91. S.C. CODE ANN. § 33-42-80 (Supp. 1984).

92. REVISED UNIF. LIMITED PARTNERSHIP ACT § 107 comment, 6 U.L.A. 229 (Supp. 1985). See S.C. CODE ANN. §§ 27-23-10 to -100 (1976).

93. See S.C. CODE ANN. § 33-43-210 (1976).

such entity.⁹⁴ These changes recognize the agency relationship between partners, but do not limit the general partner's exposure to liability for damages resulting from dissolution in breach of the partnership agreement.⁹⁵ Judicial dissolution is also possible "whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement."⁹⁶ This change grants the courts broad flexibility to dissolve limited partnerships.

The matter of winding up of limited partnerships was not specifically addressed by the ULPA.⁹⁷ In a manner which resembles a provision of the South Carolina Uniform Partnership Act,⁹⁸ the RULPA provides that nondefaulting general partners, or if there are none, the limited partners, may wind up the affairs of the partnership.⁹⁹ Additionally, the "court of common pleas"¹⁰⁰ (presumably, but not expressly, of the county in which the partnership maintains its principal place of business)¹⁰¹ may wind up the affairs of the partnership upon application of any partner or upon application of the legal representative or assignee of a partner. The priority of distribution of partnership assets upon winding up as revised by the RULPA is as follows: first, to creditors (with partners who are creditors sharing pro rata with other creditors); second, to partners then entitled to distributions; third, to partners for return of capital contributions; and fourth, to partners respecting their partnership interests in proportion to their share of distributions.¹⁰² Notably, general partners and limited partners share equally, without either group having priority, in all distributions to partners. Of course, the partnership agreement may still vary distributions to partners.

94. S.C. CODE ANN. § 33-42-620 (Supp. 1984). Cf. S.C. CODE ANN. § 33-43-210 (1976).

95. See REVISED UNIF. LIMITED PARTNERSHIP ACT § 602, 6 U.L.A. 260 (Supp. 1985); S.C. CODE ANN. § 33-42-1020 (Supp. 1984).

96. S.C. CODE ANN. § 33-42-1420 (Supp. 1984).

97. REVISED UNIF. LIMITED PARTNERSHIP ACT § 803 comment, 6 U.L.A. 269 (Supp. 1985).

98. See S.C. CODE ANN. § 33-41-1020 (1976).

99. S.C. CODE ANN. § 33-42-1430 (Supp. 1984).

100. Although the RULPA refers to the "court of common pleas," it may be assumed that this reference means the circuit court. See *supra* note 49; *infra* note 122.

101. See *infra* note 122 and accompanying text.

102. S.C. CODE ANN. § 33-42-1440 (Supp. 1984). Note that partners may be creditors as the result of entitlement to a distribution. See *supra* note 60 and accompanying text.

V. PROPOSED AMENDMENTS FOR TECHNICAL CORRECTIONS

The South Carolina RULPA, as originally adopted, contained errors which seriously undermined its effectiveness and created dramatic ambiguities in the law. Some of the errors have already been corrected, while proposals for other corrections are still pending. Specifically, House Bill 2076,¹⁰³ which has been enacted as Act 11 of 1985, corrected a typographical error in, and the effective date of, the original RULPA. A separate bill, House Bill 2532, which has recently been introduced, contains numerous proposed amendments designed to improve various aspects of the RULPA. Finally, House Bill 2158 proposes the repeal of the nonuniform affidavit filing requirement.

A. *Bill 2076*

House Bill 2076 was enacted to correct the provision in the RULPA which incorrectly repealed Chapter 41 of Title 33 of the 1976 Code, the Uniform Partnership Act. This technical correction retroactively amends the RULPA to correctly repeal Chapter 43, the ULPA.

An additional problem in the RULPA, as enacted on June 27, 1984, was its provision for a retroactive effective date of January 1, 1984. The Act was proposed in 1983 and was intended to become effective prospectively on January 1, 1984; however, a delay in its enactment resulted in its unintentionally becoming retroactively effective. House Bill 2076 alleviated this problem

103. House Bill 2076 reads as follows:

TO AMEND ACT 491 OF 1984, RELATING TO THE UNIFORM LIMITED PARTNERSHIP ACT OF 1976, SO AS TO CORRECT A CLERICAL ERROR.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 3 of Act 491 of 1984 is amended to read:

"Section 3. Chapter ~~41~~ 43 of Title 33 of the 1976 Code is repealed."

SECTION 2. The correction of the clerical error by the provisions of Section 1 of this act is effective retroactively to June 27, 1984.

SECTION 3. Section 4 of Act 491 of 1984 is amended to read:

"Section 4. This act shall take effect ~~January 1, 1984~~ June 27, 1984."

SECTION 4. The provisions of Section 3 of this act are effective retroactively to June 27, 1984.

SECTION 5. This act shall take effect upon approval by the Governor.

H.R. 2076, 106th Gen. Assembly, 1st Sess. (1985). H.R. 2076 was signed by the Governor on March 1, 1985, becoming effective as 1985 S.C. Acts 11.

by amending the language of the RULPA retroactively to provide for an effective date of June 27, 1984, the date on which the RULPA became law.

B. Bill 2532

In addition to these technical corrections, House Bill 2532 has been proposed to address various problems in the RULPA. Probably the most significant feature of this bill is the proposed addition of a “grandfather clause” to provide for a two-year grace period for compliance with the RULPA and the clarification of filing and execution procedures for amendments to existing certificates.¹⁰⁴ Many states, including Arizona, Arkansas,

104. This proposal would amend the RULPA by adding the following sections:

Section 33-42-2030. Provisions for Application to Domestic Limited Partnerships Formed After the Effective Date. Each domestic limited partnership formed on or after June 27, 1984, is governed by this chapter.

Section 33-42-2040. Provisions for Transition of Existing Limited Partnerships.

(1) Except as provided in subsections (2) and (3) of this section, each domestic limited partnership formed under any applicable statute of this State prior to June 27, 1984 (“existing limited partnership”) shall continue to be governed by Chapter 43 of Title 33 until June 27, 1986, at which time all existing limited partnerships are governed by this chapter. However, an existing limited partnership is not subject to the provisions of Section 33-42-220(c) which require the amendment of the mailing address for limited partners except and until the existing limited partnership files a certificate of amendment other than a certificate of amendment required to be filed by subsection (4) of this section, and the residence addresses or business addresses, as the case may be, of the partners as listed in the current certificate of limited partnership of each existing limited partnership is considered the mailing address of the partners for all purposes under this chapter until the addresses are amended pursuant to this chapter.

(2) Except as provided in subsection (3) of this section, each existing limited partnership may elect to be governed by this chapter before June 27, 1986, by filing with the office of the Secretary of State a certificate of amendment pursuant to this chapter which causes its certificate of limited partnership to comply with this chapter and which specifically states that it is electing to be bound by and to have the benefits, rights, liabilities and protections of this chapter.

(3) With respect to an existing limited partnership, Sections 33-42-810, 33-42-820, 33-42-1080 and 33-42-1240 apply only to contributions, distributions, and assignments made after the earlier of June 27, 1986, or the date of filing of a certificate of amendment described in subsection (2) of this section.

(4) Each existing limited partnership shall file no later than June 27, 1986, a certificate of amendment pursuant to this chapter causing the existing limited partnership to comply with the requirements of Section 33-42-30 respect-

Colorado, Connecticut, Michigan, and Iowa, have enacted similar "grandfather clauses" in their versions of the Model Act.¹⁰⁵

ing the name of the limited partnership, Section 33-42-50(1) respecting the registered office of such limited partnership, and Section 33-42-50(2) respecting the registered agent for service of process on the limited partnership. However, each existing limited partnership is required to file the certificate of amendment only to the extent it does not fully comply with Sections 33-42-30 and 33-42-50 on or before June 27, 1986. The certificate of amendment is considered effective under this chapter upon its execution by a general partner of the limited partnership and its filing in the office of the Secretary of State.

(5) The failure of any existing limited partnership to comply with subsection (4) of this section shall result on June 27, 1986 in, but only to the extent of such failure:

(a) the designation of the principal place of business of the limited partnership as specified in the limited partnership's certificate of limited partnership on the date as the registered office of partnership for purposes of Section 33-42-50(1);

(b) the designation of the Secretary of State as the registered agent for service of process on such limited partnership for purposes of Section 33-42-50(2);

(c) the limited partnership being prohibited from maintaining any action, suit or proceeding in any court of this State until it has satisfied the requirements of Section 33-42-30; and

(d) the limited partnership being prohibited from filing any other certificate of amendment unless it satisfies the requirements of subsection (4) of this section.

(6) The failure of any existing limited partnership to file the certificate of amendment required by subsection (4) of this section shall not:

(a) impair the validity of any contract or act of the limited partnership;

(b) prevent the limited partnership from defending any action, suit, or proceeding in any court in this State; or

(c) result in any limited partner becoming liable as a general partner solely by reason of the failure of the limited partnership to file the required certificate of amendment.

(7) Each existing limited partnership shall be entitled to file the certificate of amendment described in subsection (4) of this section with the office of the Secretary of State for a \$5.00 filing fee through and including June 27, 1986, but after that date any certificate of amendment which contains any provision required by subsection (4) by an existing limited partnership shall require a \$50.00 filing fee.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 1 (1985).

Practitioners should note that the limiting language of § 33-42-2040(1) concerning the nonapplication of the address amendment requirements of § 33-42-220(c) probably does not cover those limited partnerships which filed a certificate after June 27, 1984, with "business addresses" for partners. These partnerships are not "existing limited partnerships" under the amendment and should consider at least filing ministerial certificates of amendment to designate the "business addresses" as "mailing addresses" if this amendment is enacted.

105. See ALA. CODE § 10-9A-202 (Supp. 1984); ARIZ. REV. STAT. ANN. § 29-364 (Supp.

The South Carolina “grandfather clause” would provide for an extended effective date of June 27, 1986, by which time all limited partnerships formed under prior law (referred to as “existing limited partnerships” in House Bill 2532) will become subject to the RULPA and must have filed a certificate of amendment to comply with the name, office, and agent requirements of the RULPA. Existing limited partnerships may elect to be governed by the RULPA prior to that date by filing with the Secretary of State a certificate of amendment which causes its certificate of limited partnership to comply with the appropriate provisions of the RULPA and which specifically states that it is electing to be bound by, and to have the benefits, rights, liabilities, and protections of, the RULPA. Practitioners should consider making such formal election regardless of the enactment of House Bill 2532; however, if this amendment is not enacted, all existing limited partnerships will be deemed subject to the RULPA for all purposes after June 27, 1984.

Under the proposed “grandfather clause,” failure to comply with the filing requirements before June 27, 1986, will result in the designation of the existing limited partnership’s principal place of business as the registered office of the partnership and the designation of the Secretary of State as the registered agent of the partnership for service of process. Additionally, the existing limited partnership will be prohibited from maintaining any action in the courts of South Carolina or filing other certificates of amendment until it complies with the RULPA. Finally, the attempted filing of the required certificate of amendment after June 27, 1986, will be subject to a fifty dollar filing fee rather than the customary five dollar fee.

This amendment also contains express protection for non-complying existing limited partnerships. The failure of an existing limited partnership to ultimately file the required certificate of amendment will not impair the validity of any contract or act of the limited partnership, prevent the limited partner-

1984); ARK. STAT. ANN. §§ 65-564, 65-566 (1980); COLO. REV. STAT. § 7-62-1103 (Supp. 1984); CONN. GEN. STAT. § 34-38 (Supp. 1984); DEL. CODE ANN. tit. 6, § 17-1104(1)(Supp. 1984); IDAHO CODE § 3-267 (Supp. 1984); IOWA CODE § 545.1104 (Supp. 1984); MICH. COMP. LAWS §§ 449.2104, 449.2105, 449.2108 (Supp. 1984); MINN. STAT. § 322A.86 (Supp. 1984); OKLA. STAT. ANN. tit. 54, §§ 362, 364 (West Supp. 1984); WASH. REV. CODE § 25.10.670 (Supp. 1984).

ship from defending any action, suit, or proceeding in any court in South Carolina, or result in any limited partner becoming liable as a general partner solely by reason of the failure of the limited partnership to file the required certificate of amendment.¹⁰⁶

A related amendment in House Bill 2532 is designed to redefine the section 33-42-20(1) definition of "certificate of limited partnership."¹⁰⁷ Specifically, a certificate of limited partnership will be defined to include, in addition to certificates filed under the RULPA, "any certificate of limited partnership filed with the office of the Secretary of State in connection with the formation of a limited partnership under any applicable statute in this State prior to the effective date of this chapter, and any such certificate as amended,"¹⁰⁸ thus appropriately including the certificates filed by existing limited partnerships within the definition.

Another related amendment proposes the inclusion of a section which would explicitly declare county filings made prior to the effective date of the RULPA to be of no further force or effect.¹⁰⁹ This amendment is included to clarify the status of certificates of existing limited partnerships filed in county records and to expressly clarify the requirement that certificates of amendment or cancellation for existing limited partnerships must be filed only centrally with the Secretary of State.

106. Other factors could, of course, cause a limited partner to be held generally liable. See *supra* notes 62-76 and accompanying text.

107. This amendment reads:

(1) "Certificate of limited partnership" means the certificate referred to in Section 33-42-210, any certificate of limited partnership filed with the office of the Secretary of State in connection with the formation of a limited partnership under any applicable statute of this State prior to the effective date of this chapter, and the any such certificate as amended.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 2 (1985).

108. *Id.*

109. This amendment suggests the addition of the following section:

Section 33-42-2050. Status of Existing County Filings. Certificates of limited partnership and certificates of amendment filed in any official county records of this State pursuant to any applicable statute of this State prior to June 27, 1984, are of no further force or effect for any purpose under this chapter after June 27, 1984. All certificates of amendment and certificates of cancellation are fully effective to amend or cancel the certificates of limited partnership, as the case may be, upon proper filing thereof with the Secretary of State pursuant to the requirements of this chapter.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 1 (1985).

A proposed amendment to Section 33-42-30 would alter the current law to allow the use of the abbreviation "LP" in place of the words "limited partnership" in partnership names.¹¹⁰ This section would also be amended to provide that a limited partnership's name which contains the required words would not violate the prohibition under section 33-5-10(e) of the South Carolina Business Corporation Act against the use of the words "limited" or any abbreviation thereof in the name of a limited partnership.¹¹¹ A corresponding amendment¹¹² would alter section 33-42-1640 explicitly to allow foreign limited partnerships to register with the Secretary of State under any name that could be registered by a domestic limited partnership under section 33-42-30. This amendment would make the abbreviation "LP" available to foreign limited partnerships as well.¹¹³

Other proposed amendments would replace the references within various sections of the RULPA to the "business address" of partners with references to the "mailing address."¹¹⁴ This

110. The amendment would alter S.C. CODE ANN. § 33-42-30 (Supp. 1984) to read as follows:

Section 33-42-30. Name. The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain without abbreviation the words "limited partnership" or the abbreviation "LP."

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 3 (1985).

111. S.C. CODE ANN. § 33-42-30 (Supp. 1984) would be amended by adding the following item:

(5) which complies with Section 33-42-30(1) is not considered to violate the prohibition of Section 33-5-10(e) against the use of the word "limited" or any abbreviation of it in the name of a limited partnership.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 4 (1985).

112. S.C. CODE ANN. § 33-42-1640 (Supp. 1984), if amended, shall read:

Section 33-42-1640. Name. A foreign limited partnership may register with the Secretary of State under any name (whether or not it is the name under which it is registered in its state of organization) that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership under Section 33-42-30.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 18 (1985).

113. Other states have allowed the use of the abbreviation "LP." See COLO. REV. STAT. § 7-62-102(a)(Supp. 1984); DEL. CODE ANN. tit. 6, § 17-102(1)(Supp. 1984); IOWA CODE § 545.102 (Supp. 1984).

114. Under a proposed amendment, S.C. CODE ANN. § 33-42-60 (Supp. 1984) would read:

Section 33-42-60. Records to be kept. Each limited partnership shall keep at the office referred to in Section 33-42-50(1) the following: (1) a current list of the full name and last known business mailing address of each partner set forth in alphabetical order, (2) a copy of the certificate of limited partnership

change would eliminate an ambiguity in the RULPA by accommodating those limited partners who invest in limited partnerships on a solely personal basis and whose business addresses have no connection to the partnership, as well as those partners who have no business address at all.

Significant changes have been proposed in House Bill 2532 with respect to the admission of additional general partners. Section 33-42-610 of the RULPA presently allows the admission of additional general partners only with the specific written consent of *all* partners. A proposed amendment¹¹⁵ would allow part-

and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate 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, and (4) copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years. Those records are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 5 (1985).

Subsection (4) of § 33-42-210 of the South Carolina Code would be amended to read:

(4) the name and the business mailing address of each partner (specifying separately the general partners and limited partners).

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 6 (1985).

Subsection (7) of § 33-42-1620 of the South Carolina Code would be altered as follows:

(7) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and business addresses of the partners, a list of the names and addresses. The addresses of the partners included in the certificate of limited partnership filed in the State of organization or the addresses set forth in the application as required by this subsection are considered the mailing addresses of the partners for all purposes under this chapter.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 17 (1985).

Finally, § 33-42-220 of the South Carolina Code would be amended to read:

(c) A general partner who becomes aware that 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, but an amendment to show a change of mailing address of a limited partner need be filed only once every twelve months.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 9 (1985).

The purpose of these amendments is to address the problems discussed *supra* notes 22-23 and accompanying text.

115. The amendment would alter § 33-42-610 of the South Carolina Code as follows:

Section 33-42-610. Admission of Additional General Partners. After the filing of a limited partnership's original certificate of limited partnership, unless otherwise provided in the certificate of limited partnership (except where Section 33-42-1410(3)(b) applies), additional or substitute general partners may be

ners to deviate from this strict unanimity requirement with respect to additional or substitute general partners by specifying otherwise in the certificate of partnership. Section 33-42-210 also would be altered correspondingly to require the certificate to state specifically whether nonunanimous consent to the admission of general partners is to be allowed.¹¹⁶ Practitioners should ensure that partnership certificates state that such an election requires the affirmative vote of at least a majority in interest to avoid potential tax problems and unpleasant struggles and deadlocks.¹¹⁷ Another related amendment¹¹⁸ would ex-

admitted only with the specific written consent of each partner.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 13 (1985).

It is significant that, although this section represents a deviation from the Model Act and thus raises a question regarding tax ramifications, the Internal Revenue Service has already approved a similar Delaware statute. *See* Rev. Rul. 84-80, 1984-1 C.B. 275; DEL. CODE ANN. tit. 6, §§ 17-101 to -1107 (Supp. 1984). The Delaware statute neither includes the language within the parenthetical nor makes reference to “substitute” general partners. *See* DEL. CODE ANN. tit. 6, § 17-301 (Supp. 1984). These extra provisions in the South Carolina proposal are basically clarifications creating no substantive differences from the Delaware statute. Thus, this proposed amendment should not adversely affect the Internal Revenue Service’s approval of the South Carolina RULPA as corresponding to the Model Act (which itself corresponds to the ULPA) for tax classification purposes.

116. S.C. CODE ANN. § 33-42-210 (Supp. 1984) would be amended to include:

(13) any right of any number of partners fewer than all partners to admit additional or substitute general partners under Section 33-42-610;

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 8 (1985).

117. A provision for less than majority vote upon this matter could result in the election of numerous general partners by various factions within the partnership and could lead to in-fighting and stalemates with respect to on-going business matters. It could also have a negative impact for tax purposes. *See* Treas. Reg. §§ 301.7701-1, -2 (1985). Additionally, for tax classification purposes, practitioners should be concerned about taking advantage of this option to permit less than unanimous consent for admission of general partners because it may have a negative impact on the tax characteristics of centralized management or continuity of life. This concern is aggravated if the partnership intends to permit transferability of interests.

118. The amendment would expand the “safe harbor” of § 33-42-430(b) of the South Carolina Code by causing subsection (5) to read:

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

- (i) the dissolution and winding up of the limited partnership;
- (ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;
- (iii) the incurrence of indebtedness of the limited partnership other than in the ordinary course of its business;
- (iv) a change in the nature of the business; or
- (v) the removal of a general partner; or
- (vi) the election and admission of an additional or substitute general

pand the “safe harbor” provision of section 33-42-430(b) to allow limited partners to vote on the election or admission of an additional or substitute general partner without subjecting themselves to general liability.¹¹⁹

An amendment¹²⁰ corresponding to the changes in the vot-

partner.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 12 (1985). *See supra* note 73 and accompanying text.

119. This deviation from the Model Act should not cause unpleasant tax ramifications. Indeed, the Internal Revenue Service has indicated that a limited partner's right to vote on the removal and election of general partners will not be considered an additional factor with respect to the tax classification of entities formed as limited partnerships. Rather, the characteristics discussed in *Larson v. Comm'r*, 66 T.C. 159 (1976), will be determinative. Rev. Rul. 79-106, 1979-1 C.B. 448. In *Larson*, the court, while not concluding that additional factors are never relevant, found that this factor was not critically important for the purpose of classifying entities as partnerships. *See supra* note 81.

Additionally, Treas. Reg. § 301.7701-2(c)(4)(1985) specifically states that a “substantially restricted right of the limited partners to remove the general partner (e.g., in the event of the general partner's gross negligence, self-dealing, or embezzlement) will not itself cause the partnership to possess centralized management.” Because the removal of a general partner may result in dissolution of the partnership, it makes good commercial sense to allow limited partners to provide for the continuation of the partnership by electing additional or substitute general partners without incurring general liability. Additionally, if removal is permitted within the “safe harbor,” it also makes practical sense to permit election of substitute general partners because removal frequently necessitates the need to elect substitute general partners. Moreover, the basis for loss of limited liability and the need for the “safe harbor” are grounded in the activity of a limited partner approaching “control of the business” as if he were a general partner. There exists greater risk that limited partners could “control” the business indirectly by the power to remove than the power to elect substitutes. Therefore, the inclusion in the “safe harbor” of the right to elect substitute general partners seems less likely to result in abuse and is more palatable than the power to remove already included in the Model Act “safe harbor.”

120. This amendment would alter § 33-42-1410 of the South Carolina Code to read:

(3) an event of withdrawal of a general partner unless: (a) at the time there is at least one other general partner and the certificate of limited partnership permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so; but or (b) the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal, if within ninety days after the withdrawal, all remaining partners agree in writing to continue the business of the limited partnership and to the appointment admission of one or more additional or substitute general partners if necessary or desired.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 14 (1985). Practitioners should note the 90-day time requirement of § 33-42-1410(3) for agreement of the partners to continue the business after withdrawal of a general partner, which applies if there is no remaining general partner or the remaining general partner is not specifically granted the power to continue the business in the certificate. This 90-day limitation has an interrelationship also with the 30-day grace period for filing of amendments to the certificate for continua-

ing requirements for the election of general partners is designed to clarify section 33-42-1410(3), regarding the withdrawal of a general partner. This section allows all remaining partners to agree in writing to continue the business of the limited partnership and to agree to the admission of one or more additional general partners if necessary or desired. This amendment deletes superfluous and confusing language in the RULPA and clarifies this section by dividing it into two parts. Subsection (a) allows a limited partnership to continue its business after the withdrawal of a general partner if at least one general partner remains and elects, pursuant to a specific provision in the partnership certificate, to carry on the business of the limited partnership. Subsection (b) deals with the situation in which the withdrawing partner was the sole general partner or in which there is a remaining general partner but there is no express provision in the certificate permitting the remaining general partner to continue the business. For these two situations, subsection (b) provides for a ninety day period after withdrawal in which all remaining partners may agree in writing to the continuation of the business and to the admission of one or more additional or substitute general partners.

Under the present version of the RULPA, the practical ramifications of sections 33-42-610 and 33-42-1410, the sections concerning withdrawal and replacement of general partners, give rise to an interesting, and perhaps unfortunate, problem. Because unanimity is required for the admission of additional or substitute general partners and for the continuation of the business after the withdrawal of a general partner, a single recalcitrant partner may effectively prevent the effectuation of either of these critical events by withholding his consent. The proposed amendments do not totally alleviate this problem.¹²¹ Thus, re-

tion as provided in § 33-42-220(b). *See supra* notes 45-46. Thus, apparently, an amendment to the certificate must be filed within 120 days (and in some instances 30 days) of an event of withdrawal for continuing the business.

121. The amendments with respect to this issue reflected political as well as tax considerations. The amendment's drafters considered permitting fewer than all remaining partners to elect to continue the business or to elect substitute general partners under § 33-42-1410(3) after an event of withdrawal (as is permitted by § 33-42-610 in other situations); however, they opted against this more controversial version because they did not want to jeopardize the passage of House Bill 2532 in its entirety and the careful practitioner could overcome the unanimity requirement of § 33-42-1410(3) by appropriate drafting. Additionally, this cautious approach was selected to avoid the risk

ardless of whether the amendments are enacted, provision should be made within partnership agreements for the buy-out of any partner who dissents to the continuation of the business or, after a vote to continue, dissents to the election of a substitute general partner. This buy-out provision, which should be mandatory with respect to a dissenting partner but optional with respect to the other partners, would protect the partnership against the damaging effects of stalemate, an event which is fostered under these sections of the Model Act. A stalemate could result in dissolution of the limited partnership. While the partnership could possibly overcome state law considerations through the formation of a new partnership, it could not escape the unpleasant tax ramifications which frequently accompany dissolution. A buy-out provision, which could be structured fairly for the partners, thus seems necessary for the well-being of the partnership.

Amendments have also been proposed to correct various sections within the RULPA which presently refer to the "Court of Common Pleas."¹²² Because South Carolina no longer has a

that it would be viewed as providing the corporate tax characteristic of continuity of business, a factor which might increase the likelihood that an entity could become subject to taxation as a corporation rather than as a limited partnership.

122. The proposed amendments of §§ 33-42-250, 33-42-1420, and 33-42-1430 of the South Carolina Code state:

Section 33-42-250. Amendment or Cancellation by Judicial Act. If a person required by Section 33-42-240 to execute a certificate of amendment or cancellation fails or refuses to do so, any other partner, and any assignee of a partnership interest, who is adversely affected by the failure or refusal, may petition the circuit court of common pleas the county in which the limited partnership's office designated pursuant to Section 33-42-50(1) is located to direct the amendment or cancellation. If the court finds that the amendment or cancellation is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary of State to record an appropriate certificate of amendment or cancellation.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 10 (1985).

Section 33-42-1420. Judicial Dissolution. On application by or for a partner the circuit court of the county in which the limited partnership's office designated pursuant to Section 33-42-50(1) is located common pleas may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 15 (1985).

Section 33-42-1430. Winding Up. Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but the circuit court of the county in which the limited partner-

constitutional court of common pleas, the proposed amendments would simply provide for recourse to the appropriate circuit courts. Additionally, the statute would designate the proper county in which to bring suit, filling a gap in the RULPA as originally enacted.¹²³

A final amendment in House Bill 2532 has been proposed to clarify section 33-42-290¹²⁴ by adding clerically omitted language. This amendment simply specifies that all types of certificates must be delivered to limited partners upon their filing.

C. Bill 2158

A separate bill, House Bill 2158,¹²⁵ is pending which, if passed, will repeal section 33-42-300, requiring the filing of an affidavit of general partners' authority in the index to deeds of any county in which the partnership owns real property as a precondition to the partnership's transferring any interest in the property. This amendment is desirable because it would delete a nonuniform and ineffective requirement which both frustrates foreign limited partnerships attempting to do business in South Carolina and defeats the singular central filing requirement of the RULPA. Additionally, the repeal of this section would bring the South Carolina RULPA into line with the Model Act and the RULPA versions of other states, thus promoting the goal of uniformity.

ship's office designated pursuant to Section 33-42-50(1) is located common pleas may wind up the limited partnership's affairs upon application of any partner, his legal representative, or assignee.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 16 (1985).

123. See *supra* notes 49-51 and accompanying text.

124. S.C. CODE ANN. § 33-42-290 (Supp. 1984) would be corrected by the addition of the clerically omitted language to read:

Section 33-42-290. Delivery of Certificate to Limited Partner. Upon the return by the Secretary of State pursuant to Section 33-42-260 of a certificate marked "Filed," the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation or any judicial decree of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

H.R. 2532, 106th Gen. Assembly, 1st Sess. § 11 (1985). See *supra* notes 41-43 and accompanying text.

125. This bill, proposed by Representative David M. Beasley, reads in part as follows: "Be it enacted by the General Assembly of the State of South Carolina [that §] 33-42-300 of the 1976 Code is repealed." H.R. 2158, 106th Gen. Assembly, 1st Sess. (1985). See *supra* notes 52-53 and accompanying text.

VI. CONCLUSION

The adoption of the RULPA in South Carolina represents an important advancement in the commercial laws of this state. Practitioners should be aware, however, that in most aspects the law regarding limited partnerships in South Carolina has been radically altered by the RULPA. The law governing the formation and operation of limited partnerships and the liabilities of and relationships among partners has been clarified, reorganized, and restated. Additionally, notice should be taken of the various proposed amendments which, if enacted,¹²⁶ will improve the functionality of the RULPA. By clarifying many ambiguities in the ULPA, the RULPA provides an improved foundation for capital formation using the limited partnership structure.

126. House Bill 2532 was approved by the South Carolina House of Representatives and referred to the South Carolina Senate Judiciary Committee on May 7, 1985. This bill did not receive Senate action prior to adjournment of the session and is expected to receive action in the earliest stages of the next session. Telephone Interview with Georgiana Mathews, Administrative Assistant, South Carolina Senate Judiciary Committee (June 17, 1985).

House Bill 2158 is pending before the South Carolina House of Representatives Judiciary Committee and had not received action in the House or the Senate at the end of the session. Telephone Interview with Allan Dean, South Carolina Legislative Page (June 17, 1985).

