

Approved April 2, 1987  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at  
Chairperson

10:00 a.m./~~pm~~ on March 25, 1987 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines Langworthy, Parrish, Steineger, Talkington, Winter and Yost.

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

Ron Smith, Kansas Bar Association  
Dan Rice, Office of Secretary of State

House Bill 2151 - Amendments to revised uniform limited partnership act.

Ron Smith, Kansas Bar Association, appeared in support of the bill. He stated since the promulgation of the Kansas Uniform Limited Partnership Act, there have been several revenue rulings of the Internal Revenue Code that have made technical changes to the Uniform Limited Partnership Act. KBA believes it is prudent public policy to incorporate those revenue rulings into our statutory code. A copy of his testimony is attached (See Attachment I).

Dan Rice, Office of Secretary of State, appeared in support of the bill. He testified the bill presented here today will amend the Kansas Revised Uniform Limited Partnership Act to reflect the 1985 RULPA suggested amendments. In drafting the bill many provisions of 1985 Delaware act, which tie their limited partnership laws to the Delaware corporate code, were included along with modifications for accommodation of the Kansas corporate code. A copy of his testimony is attached (See Attachment II). He pointed out there is a redundant provision in the bill in lines 183 through 185 and in line 29, "reinserted". He said he has talked to revisor's office concerning this and that it can be deleted.

House Bill 2007 - Crimes involving aiding runaways.

Chairman reviewed the bill. Senator Burke moved to report the bill favorably. Senator Gaines seconded the motion, and the motion carried.

House Bill 2008 - Furnishing alcohol or drugs to minors, penalties.

Following chairman's review of the bill, Senator Burke moved to report the bill favorably. Senator Gaines seconded the motion, and the motion carried.

House Bill 2010 - Definition of crime of indecent liberties with a child.

The chairman reviewed the bill. Senator Gaines moved to report the bill favorably. Senator Burke seconded the motion, and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on March 25, 1987

House Bill 2012 - Missing children information clearinghouse.

The chairman reviewed the bill. Senator Burke moved to report the bill favorably. Senator Gaines seconded the motion, and the motion carried.

House Bill 2258 - Removal of limits on those present at oral deposition.

Senator Gaines moved to report the bill favorably. Senator Burke seconded the motion.

Senator Parrish made a substitute motion to amend the bill in line 234 to change paralegal assistants to paralegal or legal assistant. Senator Steineger seconded the motion, and the motion carried.

Senator Gaines moved to report the bill favorably as amended. Senator Burke seconded the motion, and the motion carried.

House Bill 2023 - Kansas tort claims act amendments.

Senator Burke moved to amend the bill conceptually by reinserting the language in italics in lines 192 through 195. Senator Steineger seconded the motion.

Senator Winter made a substitute motion to amend the bill to reinsert the Fudge language and add separate sentence to make it clear that finder fact may consider violation or lack of any personnel problem in determining question of negligence. Senator Yost seconded the motion. Senator Steineger explained the purpose of the motion is to re-establish the law as it existed prior to the Fudge existence.

During committee discussion a committee member pointed out this summer in the interim meeting we agreed to exempt anything that pertains to personnel problem.

The meeting adjourned.

A copy of the guest list is attached (See Attachment III).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-25-87

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Tom Taylor	Topeka	KPL Gas Service
Bill Sipek	Kansas for Up Topeka	
Ken Power	Clatke Kansas	Kansas for Life
Newton B. Rice	Topeka	Secretary of State
Ed Fay	Topeka	KID
Richard Funk	Topeka	KASB
Rick Kready	Topeka	KPL Gas Service
Bob Remert	"	KPOA
Darlene Starns	Topeka	PCAR Ms
Ron Smith	"	KSA
Bob Curbish	—	KTR #
<del>John Smith</del>		
Leri Celaban	Topeka	Am. Ind. Assoc
Gail Hamlet	Lawrence	KWOJ
Tom Gray	Lawrence	KPL Gas Service
Pat Habbell	Topeka	Kansas Railroadism.
Ed J... ..	"	KCCF
Kathy D... ..	Wichita	USD 259

attch. III  
Sen. Jud.  
3-25-87

March 25, 1987  
HB 2151

Mr. Chairman. Members of the Senate Judiciary Committee. I am  
Ron Smith, KBA Legislative Counsel.

KBA Supports these recommended changes in the Uni-  
form Limited Partnership Act, KSA 56-301 et seq.

Since the promulgation of the Kansas Uniform Limited Partnership  
Act, there have been several revenue rulings of the Internal Revenue  
Code that have made technical changes to the Uniform Limited Partner-  
ship Act. KBA believes it is prudent public policy to incorporate  
those revenue rulings into our statutory code.

The main amendment is at the top of Page 7, which determines the  
time a person becomes a limited partner. You can imagine that it has  
tax consequences when a person becomes a limited, and that was the  
reason for this clarification.

The amendments at page 12 were suggested by the Secretary of  
State, and we have no position on them.

The changes offered in this legislation were reviewed by the Uni-  
form Laws Commission, and recommended for uniform adoption by the vari-  
ous state legislatures which have adopted the Uniform Limited Partner-  
ship Act.

KBA recommends the bill be reported favorable for passage.

*Atch. I  
Sen. Jud.  
3-25-87*

3-25-87



Bill Graves  
Secretary of State

2nd Floor, State Capitol  
Topeka, KS 66612-1594  
(913) 296-2236

## STATE OF KANSAS

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

ON HB 2151

March 25, 1987

By: Danton B. Rice

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I am Dan Rice and I am legal counsel for the Secretary of State's office. I am here today to testify in support of HB 2151 and to answer any questions the committee might have concerning the bill and the Kansas Limited Partnership statutes.

### I. BACKGROUND

I would like first to give the committee a very brief background of the development of the law which governs Kansas limited partnerships. In 1916 the National Conference of Commissioners on Uniform State Laws recommended passage of the Uniform Limited Partnership Act, known as ULPA. The Uniform Limited Partnership Act was eventually adopted by every state except for Louisiana. The Kansas legislature adopted ULPA in 1967. All Kansas limited partnerships formed prior to January 1, 1984 are subject to ULPA and therefore the law is still on the books.

As more limited partnerships were created and the number of limited partners and amount of invested capital increased, the ambiguities and flaws in ULPA were discovered which prompted the National Conference of Commissioners to propose the adoption of the Revised Uniform Limited Partnership Act (RULPA) in 1976.

The Revised Uniform Limited Partnership Act was adopted by Delaware in 1982 after it was modified to dovetail with the Delaware Corporate Code. Since the Kansas General Corporation Code was modeled after the Delaware code, in 1983 Kansas adopted most of the modifications made to RULPA by Delaware and further modified the act to conform with our corporate code whenever possible.

In 1985 Delaware adopted further modifications to RULPA which became effective August 1, 1985, and significantly amended the 1976 RULPA and the 1982 Delaware Act. On August 8, 1985, the Commissioners approved amendments to RULPA which make a number of improvements on the prior uniform law.

*attach. II  
Sen. Jud.  
3-25-87*

The bill presented here today will amend the Kansas Revised Uniform Limited Partnership Act to reflect the 1985 RULPA suggested amendments. In drafting HB 2151 many provisions of 1985 Delaware act, which tie their limited partnership laws to the Delaware corporate code, were included along with modifications for accommodation of the Kansas corporate code.

## II. SUMMARY OF HB 2151

I will not burden the committee with a detailed analysis of the amendments proposed by HB 2151, however I do think it is important to be aware of the basic changes proposed.

The amendment to 56-1a101 will allow partnerships to file a restated certificate of limited partnership just as corporations are currently allowed to file restated articles of incorporation (K.S.A. 17-6605). This will be an important change as many limited partnerships will elect to consolidate and edit their certificates in light of the rest of the amendments proposed.

The amendment to 56-1a102 will delete the restriction that a name of a limited partnership may not contain words which indicate that it is organized for purposes other than which appear in the certificate. The rationale for this change is that because of the changes in the requirements of the certificate there will no longer be a method of checking the purpose of the limited partnership.

The 1985 RULPA significantly reduces the amount of information to be included in the initial certificate of limited partnership and the amendment to 56-1a151 reflects that reduction. Under current law there are twelve requirements in a certificate of limited partnership. The section as amended will require inclusion of only the name of the limited partnership; the address of the limited partnership's registered office; the name and address of the limited partnership's agent for service of process; the name and the business, residence, or mailing address of each general partner and the latest date upon which the limited partnership is to dissolve. These changes should substantially ease the administrative burden placed upon limited partnerships under prior law.

The amendment to 56-1a152 will remove the requirement of an amendment to the certificate of limited partnership for the admission or withdrawal of a limited partner. This will make managing the certificate significantly easier for limited partnerships with many partners whose identities and contributions change frequently and reflects the changes in the requirements of certificates of limited partnership.

The amendment to 56-1a154 will delete the requirement that all partners must sign or that there must be a power of attorney given to a general partner before partnership documents may be executed. This section will ease the administrative burdens of a limited partnership by requiring only the signature of general partners to execute partnership documents.

The amendment to 56-1a155 dealing with the amendment or cancelation of a certificate by the court will allow any person adversely affected by a failure to execute a partnership document to petition the district court to direct the execution. The previous section only allowed a partner or assignee of a partner to petition the court for this remedy.

The amendment to 56-1a201 adds the provision that a person becomes a limited partner on the later of the date of original filing or the date stated in the certificate.

The amendment to 56-1a203 dealing with the limited liability of limited partners adds to the list of activities which a limited partner may engage in without being considered a general partner for liability purposes. A limited partner is a general partner if they participate in the control of the business. The bill as presented adds to the list of activities which do not evidence participation in the control of business: being an officer, director, or shareholder of a general partner that is a corporation; guaranteeing an obligation of the limited partnership; taking an action required by law to bring a derivative action in the name of the limited partnership; or requesting or attending a meeting of partners.

The amendment to 56-1a251 provides that if the partnership agreement is silent on the admission of new general partners they may be admitted only upon specific written consent of all partners. This is a change reflects the change in the requirements of the certificate of a limited partnership.

The amendment to 56-1a252 makes a similar change with respect to the withdrawal of a general partner. Unless otherwise provided in the partnership agreement or with consent of all partners the person ceases to be a general partner if they engage in certain prohibited acts.

The amendment to 56-1a302 is in response to the fact that a limited partnership no longer will necessarily set forth the promised contributions of the partners. Under our current code, except as provided in the certificate of limited partnership, a partner could be obligated to perform any promise to contribute to the limited partnership even if unable to perform because of death, disability, or other reason. Under this amendment, if a partner does not make the

required contribution, that partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value, as stated in the records of the partnership (rather than in the certificate of limited partnership), of the contribution that has not been made.

The amendment to 56-1a502 deletes the requirement that the registration of a foreign limited partnership must include the names and addresses of of the partners if it is not filed in a public record in the home state. Instead the Uniform Commissioners have substituted a provision which requires the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions. This amendment will be of help in cutting down the paper work required to file foreign registration statements from several states.

### III. AMENDMENTS

The bill also contains two amendments which were not part of RULPA. The first is an amendment to K.S.A. 56-1a-606 which is the section dealing with the franchise tax to be paid by domestic limited partnerships.

Under the current statutes, domestic limited partnerships pay "\$1 for each \$1000 of the partners' net capital accounts" (56-1a-606) while foreign limited partnerships pay "\$1 per \$1000 of the partners' net capital accounts located in or used in the state" (K.S.A. 56-1a-607). In other words, a Kansas limited partnership must pay the state of Kansas franchise fees on their partners' net capital accounts regardless of where the accounts are located, but a foreign limited partnership only pays a franchise fee on net capital accounts located in Kansas.

In addition, the corporate code requires both domestic and foreign corporations to pay franchise fees only on shareholder equity attributable to Kansas.

This amendment removes this inconsistent treatment of domestic limited partnerships and will conform with the corporate code treatment.

The second amendment contained in HB 2151 which is not part of RULPA is a technical amendment to the annual reporting statutes. Under the present corporate code (K.S.A. 17-7507) a corporation less than 6 months old is not required to file an annual report. The Revised Uniform Limited Partnership Act nor the Uniform Limited Partnership Act contain similar provisions.

An example of this difference would be: if a limited partnership with a 12/31 year end files a certificate on or after July 1 of a given



year the first annual report is due by April 15 of the succeeding year, i.e. if the limited partnership files July 1, 1984 the first annual report is due April 15, 1985. In contrast a corporation with a 12/31 year end filing articles of incorporation on or after July 1 of a given year files its first annual report April 15 of the next succeeding year, i.e. if articles filed July 1, 1984 the first annual report is due April 15, 1986.

In the past the customary practice of our office, as well as that of the bar, has been that the first annual report of a limited partnership is not due until the next succeeding year if the certificate is filed the last six months of the limited partnerships tax year.

The concern that has been brought to the attention of our office is the possibility of liability in a situation where an injured plaintiff was attempting to pierce the limited liability of a limited partnership. It could be argued that the certificate of a limited partnership should be cancelled after April 16 following the year in which the limited partnership is first filed even though its certificate was filed in the last six months. Although the risk of this issue being raised in litigation may be minimal, the Secretary of State's office has requested the amendment for the benefit of both the bar and the limited partnerships in the state.

If the committee has any questions I would be happy to try to answer them.