

ACT 284

S.B. NO. 1512

A Bill for an Act Relating to the Uniform Partnership Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 425, Hawaii Revised Statutes, is amended by adding a new part IV, to read as follows:

**“PART IV. UNIFORM PARTNERSHIP ACT  
GENERAL PROVISIONS**

**§425-101 Definition.** As used in this part, unless the context otherwise requires:

“Business” includes every trade, occupation, and profession.

“Debtor in bankruptcy” means a person who is the subject of:

- (1) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
- (2) A comparable order under federal, state, or foreign law governing insolvency.

“Director” means the director of commerce and consumer affairs.

“Distribution” means a transfer of money or other property from a partnership to a partner in the partner’s capacity as a partner or to the partner’s transferee.

“Foreign limited liability partnership” means a partnership that:

- (1) Is formed under laws other than the laws of this State; and
- (2) Has the status of a limited liability partnership under those laws.

“Limited liability partnership” means a partnership that has filed a certificate of limited liability partnership under section 425-153 and does not have a similar statement in effect in any other jurisdiction.

“Partnership” means an association of two or more persons to carry on as co-owners a business for profit formed under section 425-109, a predecessor law, or comparable law of another jurisdiction.

“Partnership agreement” means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

“Partnership at will” means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

“Partnership interest” or “partner’s interest in the partnership” means all of a partner’s interests in the partnership, including the partner’s transferable interest and all management and other rights.

“Person” means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Property” means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

“State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

“Statement” means a registration or annual statement filed under section 425-1, a statement of correction filed under section 425-1.7, a statement of change filed under section 425-7, a statement of dissolution filed under section 425-9, a statement of denial filed under section 425-115, a statement of dissociation filed under section 425-136, an amendment, or any other document filed under this chapter.

“Transfer” includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

**§425-102 Knowledge and notice.** (a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

- (1) Knows of it;
- (2) Has received a notification of it; or
- (3) Has reason to know it exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(d) A person receives a notification when the notification:

- (1) Comes to the person’s attention; or
- (2) Is duly delivered at the person’s place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as otherwise provided in subsection (f), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual’s attention if the person had exercised reasonable diligence. A person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner’s knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

**§425-103 Effect of partnership agreement; nonwaivable provisions.** (a) Except as otherwise provided in subsection (b), relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this part governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement shall not:

- (1) Vary the rights and duties under section 425-105 except to eliminate the duty to provide copies of statements to all of the partners;

- (2) Unreasonably restrict the right of access to books and records under section 425-122(b);
- (3) Eliminate the duty of loyalty under section 425-123(b) or 425-132(b)(3), but:
  - (A) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or
  - (B) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
- (4) Unreasonably reduce the duty of care under section 425-123(c) or 425-132(b)(3);
- (5) Eliminate the obligation of good faith and fair dealing under section 425-123(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (6) Vary the power to dissociate as a partner under section 425-131(a), except to require the notice under section 425-130(1) to be in writing;
- (7) Vary the right of a court to expel a partner in the events specified in section 425-130(5);
- (8) Vary the requirement to wind up the partnership business in cases specified in section 425-138(4), (5), or (6);
- (9) Vary the law applicable to a limited liability partnership under section 425-161; or
- (10) Restrict rights of third parties under this part.

**§425-104 Supplemental principles of law.** (a) Unless displaced by particular provisions of this part, the principles of law and equity supplement this part.

(b) If an obligation to pay interest arises under this part and the rate is not specified, the rate is that specified in section 478-2.

**§425-105 Recording and notification of statements.** (a) A certified copy of a statement that has been filed in the office of the director and recorded in the bureau of conveyances has the effect provided for recorded statements in this part. A recorded statement that is not a certified copy of a statement filed in the office of the director does not have the effect provided for recorded statements in this part.

(b) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

**§425-106 Governing law.** Except as otherwise provided in section 425-161, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

**§425-107 Partnership subject to amendment or repeal of chapter.** A partnership governed by this part is subject to any amendment to or repeal of this chapter.

## NATURE OF PARTNERSHIP

**§425-108 Partnership as entity.** (a) A partnership is an entity distinct from its partners.

(b) A limited liability partnership continues to be the same entity that existed before the filing of a certificate of limited liability partnership under section 425-153.

**§425-109 Formation of partnership.** (a) Except as otherwise provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this part, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this part.

(c) In determining whether a partnership is formed, the following rules apply:

- (1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.
- (2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.
- (3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:
  - (A) Of a debt by installments or otherwise;
  - (B) For services as an independent contractor or of wages or other compensation to an employee;
  - (C) Of rent;
  - (D) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;
  - (E) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or
  - (F) For the sale of the goodwill of a business or other property by installments or otherwise.

**§425-110 Partnership property.** Property acquired by a partnership is property of the partnership and not of the partners individually.

**§425-111 When property is partnership property.** (a) Property is partnership property if acquired in the name of:

- (1) The partnership; or
  - (2) One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.
- (b) Property is acquired in the name of the partnership by a transfer to:
- (1) The partnership in its name; or

- (2) One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.
- (c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.
- (d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

## RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

**§425-112 Partner agent of partnership.** Subject to the effect of a partnership registration statement under section 425-1:

- (1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.
- (2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

**§425-113 Transfer of partnership property.** (a) Partnership property may be transferred as follows:

- (1) Subject to the effect of a partnership registration statement filed under section 425-1, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.
  - (2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.
  - (3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.
- (b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 425-112 and:
- (1) As to a subsequent transferee who gave value for property transferred under subsection (a)(1) and (2), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

- (2) As to a transferee who gave value for property transferred under subsection (a)(3), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (b), from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

**§425-114 Partnership registration statement.** (a) A filed registration statement supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

- (1) Except for transfers of real property, a grant of authority contained in a filed registration statement is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in the filed registration statement. A filed cancellation of a limitation on authority revives the previous grant of authority.
- (2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed registration statement recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the bureau of conveyances of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(b) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed registration statement containing the limitation on authority is of record in the bureau of conveyances.

(c) Except as otherwise provided in subsections (a) and (b) and sections 425-136 and 425-142, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed registration statement.

**§425-115 Statement of denial.** A partner or other person named as a partner in a filed statement of partnership authority may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in section 425-114(a) and (b).

**§425-116 Partnership liable for partner's actionable conduct.** (a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive

money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

**§425-117 Partner's liability.** (a) Except as otherwise provided in subsections (b) and (c), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership.

**§425-118 Actions by and against partnership and partners.** (a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and, to the extent not inconsistent with section 425-117, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership shall not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner shall not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 425-117 and:

- (1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
- (2) The partnership is a debtor in bankruptcy;
- (3) The partner has agreed that the creditor need not exhaust partnership assets;
- (4) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or
- (5) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 425-119.

**§425-119 Liability of purported partner.** (a) If a person, by word or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership

liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) Except as otherwise provided in subsections (a) and (b), persons who are not partners as to each other are not liable as partners to other persons.

### **RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP**

**§425-120 Partner's rights and duties.** (a) Each partner is deemed to have an account that is:

- (1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and
- (2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under section 425-112.



**§425-121 Distributions in kind.** A partner has no right to receive, and shall not be required to accept, a distribution in kind.

**§425-122 Partner's rights and duties with respect to information.** (a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

- (1) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this part; and
- (2) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

**§425-123 General standards of partner's conduct.** (a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c).

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

- (1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;
- (2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and
- (3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this part or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this part or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

**§425-124 Actions by partnership and partners.** (a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

- (1) Enforce the partner's rights under the partnership agreement;
- (2) Enforce the partner's rights under this part, including:
  - (A) The partner's rights under section 425-120, 425-122, or 425-123;
  - (B) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 425-133 or enforce any other right under sections 425-130 to 425-132 or sections 425-133 to 425-137; or
  - (C) The partner's right to compel a dissolution and winding up of the partnership business or enforce any other right under sections 425-138 to 425-144; or
- (3) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

**§425-125 Continuation of partnership beyond definite term or particular undertaking.** (a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

## TRANSFEREES AND CREDITORS OF PARTNER

**§425-126 Partner not co-owner of partnership property.** A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

**§425-127 Partner's transferable interest in partnership.** The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

**§425-128 Transfer of partner's transferable interest.** (a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

- (1) Is permissible;
- (2) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

- (3) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.
- (b) A transferee of a partner's transferable interest in the partnership has a right:
  - (1) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
  - (2) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and
  - (3) To seek under section 425-138 a judicial determination that it is equitable to wind up the partnership business.
- (c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.
- (d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.
- (e) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.
- (f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

**§425-129 Partner's transferable interest subject to charging order.** (a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

- (c) At any time before foreclosure, an interest charged may be redeemed:
  - (1) By the judgment debtor;
  - (2) With property other than partnership property, by one or more of the other partners; or
  - (3) With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.
- (d) This part does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.
- (e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

## PARTNER'S DISSOCIATION

**§425-130 Events causing partner's dissociation.** A partner is dissociated from a partnership upon the occurrence of any of the following events:

- (1) The partnership's receipt of notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

- (2) An event agreed to in the partnership agreement as causing the partner's dissociation;
- (3) The partner's expulsion pursuant to the partnership agreement;
- (4) The partner's expulsion by the unanimous vote of the other partners if:
  - (A) It is unlawful to carry on the partnership business with that partner;
  - (B) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;
  - (C) Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed articles of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the articles of dissolution or no reinstatement of its charter or its right to conduct business; or
  - (D) A partnership that is a partner has been dissolved and its business is being wound up;
- (5) On application by the partnership or another partner, the partner's expulsion by judicial determination because:
  - (A) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;
  - (B) The partner wilfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 425-123; or
  - (C) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;
- (6) The partner's:
  - (A) Becoming a debtor in bankruptcy;
  - (B) Executing an assignment for the benefit of creditors;
  - (C) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or
  - (D) Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;
- (7) In the case of a partner who is an individual:
  - (A) The partner's death;
  - (B) The appointment of a guardian or general conservator for the partner; or
  - (C) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;
- (8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;
- (9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the

- estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or
- (10) Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

**§425-131 Partner's power to dissociate; wrongful dissociation.** (a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 425-130(1).

(b) A partner's dissociation is wrongful only if:

- (1) It is in breach of an express provision of the partnership agreement; or
- (2) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:
  - (A) The partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under section 425-130(6) to (10) or wrongful dissociation under this subsection;
  - (B) The partner is expelled by judicial determination under section 425-130(5);
  - (C) The partner is dissociated by becoming a debtor in bankruptcy; or
  - (D) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it wilfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

**§425-132 Effect of partner's dissociation.** (a) If a partner's dissociation results in a dissolution and winding up of the partnership business, sections 425-138 to 425-144 apply; otherwise, sections 425-133 to 425-137 apply.

(b) Upon a partner's dissociation:

- (1) The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 425-140;
- (2) The partner's duty of loyalty under section 425-123(b)(3) terminates; and
- (3) The partner's duty of loyalty under section 425-123(b)(1) and (2) and duty of care under section 425-123(c) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 425-140.

## PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

**§425-133 Purchase of dissociated partner's interest.** (a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 425-138, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b).

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under section 425-144(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were

wound up as of that date. Interest shall be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under section 425-131(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 425-134.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

(f) If a deferred payment is authorized under subsection (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) shall be accompanied by the following:

- (1) A statement of partnership assets and liabilities as of the date of dissociation;
- (2) The latest available partnership balance sheet and income statement, if any;
- (3) An explanation of how the estimated amount of the payment was calculated; and
- (4) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c), or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to section 425-124(b)(2), to determine the buyout price of that partner's interest, any offsets under subsection (c), or other terms of the obligation to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g).

**§425-134 Dissociated partner's power to bind and liability to partnership.** (a) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership is bound by an act of the dissociated partner which would have bound the partnership under section 425-112 before dissociation only if at the time of entering into the transaction the other party:

- (1) Reasonably believed that the dissociated partner was then a partner;
- (2) Did not have notice of the partner's dissociation; and
- (3) Is not deemed to have had knowledge under section 425-114(b) or notice under section 425-136(c).

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a).

**§425-135 Dissociated partner's liability to other persons.** (a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (b).

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership within two years after the partner's dissociation, only if the partner is liable for the obligation under section 425-117 and at the time of entering into the transaction the other party:

- (1) Reasonably believed that the dissociated partner was then a partner;
- (2) Did not have notice of the partner's dissociation; and
- (3) Is not deemed to have had knowledge under section 425-114(b) or notice under section 425-136(c).

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

**§425-136 Statement of dissociation.** (a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of section 425-114(a) and (b).

(c) For the purposes of sections 425-134(a)(3) and 425-135(b)(3), a person not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

**§425-137 Continued use of partnership name.** Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

## WINDING UP PARTNERSHIP BUSINESS

**§425-138 Events causing dissolution and winding up of partnership business.** A partnership is dissolved, and its business shall be wound up, only upon the occurrence of any of the following events:

- (1) In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under section 425-130(2) to (10), of that partner's express will to withdraw as a partner, or on a later date specified by the partner;
- (2) In a partnership for a definite term or particular undertaking:
  - (A) Within ninety days after a partner's dissociation by death or otherwise under section 425-130(6) to (10) or wrongful dissociation under section 425-131(b), the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to section 425-131(b)(2) constitutes the expression of that partner's will to wind up the partnership business;
  - (B) The express will of all of the partners to wind up the partnership business; or
  - (C) The expiration of the term or the completion of the undertaking;
- (3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business;
- (4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;
- (5) On application by a partner, a judicial determination that:
  - (A) The economic purpose of the partnership is likely to be unreasonably frustrated;
  - (B) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or
  - (C) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or
- (6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:
  - (A) After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or
  - (B) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

**§425-139 Partnership continues after dissolution.** (a) Subject to subsection (b), a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

- (1) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and



- (2) The rights of a third party accruing under section 425-141(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

**§425-140 Right to wind up partnership business.** (a) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, a court of competent jurisdiction for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business.

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 425-144, settle disputes by mediation or arbitration, and perform other necessary acts.

**§425-141 Partner's power to bind partnership after dissolution.** Subject to section 425-142, a partnership is bound by a partner's act after dissolution that:

- (1) Is appropriate for winding up the partnership business; or
- (2) Would have bound the partnership under section 425-112 before dissolution, if the other party to the transaction did not have notice of the dissolution.

**§425-142 Statement of dissolution.** (a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed registration for the purposes of section 425-114(a) and is a limitation on authority for the purposes of section 425-114(b).

(c) For the purposes of sections 425-112 and 425-141, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a registration statement which will operate with respect to a person not a partner as provided in section 425-114(a) and (b) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

**§425-143 Partner's liability to other partners after dissolution.** (a) Except as otherwise provided in subsection (b) and section 425-117, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 425-141.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under section 425-141(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

**§425-144 Settlement of accounts and contributions among partners.** (a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, shall be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are

creditors. Any surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b).

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 425-117.

(c) If a partner fails to contribute the full amount required under subsection (b), all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 425-117. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 425-117.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 425-117.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

## MISCELLANEOUS PROVISIONS

**§425-145 Short title.** This part may be cited as the Uniform Partnership Act."

SECTION 2. Section 425-1, Hawaii Revised Statutes, is amended to read as follows:

**"§425-1 Registration and annual statements.** Whenever any general partnership is formed under the laws of the State to do business in the State, or any general partnership formed under the laws of any other jurisdiction shall do business in the State, such partnership shall file in the office of the director of commerce and consumer affairs the registration and annual statements hereinafter provided. A registration statement shall be filed by a partnership formed under the laws of the State within thirty days after the partnership is formed and by a partnership formed under the laws of any other jurisdiction within thirty days after the commencement of business in the State. An annual statement shall be filed on or before March 31 of each year, as of December 31 of the preceding year. Every such registration statement shall contain the following information:

- (1) The name of the partnership;
- (2) The name and residence of each partner;
- [(3) The nature of the partnership business;
- (4)] (3) The [location] street address of the [principal place of business] chief executive office of the partnership in the State and, if the partnership is one formed under the laws of any other jurisdiction, the

- name of the jurisdiction and the [location of the principal place of business] street address of the [partnership;] partnership's chief executive office and of one office in this State, if there is one;
- [(5)] (4) The date the partnership was formed and, if the partnership is one formed under the laws of any other jurisdiction, the date the partnership commenced business in the State;
- [(6)] (5) The fact that none of the partners is either a minor or an incompetent person;
- [(7)] (6) In the case of a foreign general partnership, the designation of a person residing within the State as agent for service of process and notice[.];
- (7) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership, and may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

Every such annual statement shall contain the information specified in paragraphs (1), (2), (3), (4), (6), and (7) [above] and a listing of the names of any partner admitted, withdrawn, or who has died during the year.

The registration statement of a domestic partnership shall be certified by each partner, and the registration statement of a foreign partnership shall be certified by at least one partner. Each annual statement shall be certified as correct by any partner."

SECTION 3. Section 425-9, Hawaii Revised Statutes is amended to read as follows:

**"§425-9 Statement of dissolution.** Whenever a domestic general partnership is dissolved, and the business is not continued [within the meaning of section 425-141(1), (3), (5), or (6)], a statement thereof showing the cause of dissolution shall be filed in the office of the director of commerce and consumer affairs within thirty days after dissolution. The statement shall be certified by all partners except in such cases as the circumstances make it obviously impossible to secure the signature of one or more partners, which circumstances shall be set forth in the statement."

SECTION 4. Section 425-166, Hawaii Revised Statutes, is amended to read as follows:

**"[§425-166] Statement of dissolution.** Whenever a limited liability partnership is dissolved, and the business is not continued [within the meaning of section 425-141(1), (3), (5), or (6)], a statement thereof showing the cause of dissolution shall be filed in the office of the director within thirty days after dissolution. The statement shall be certified by all partners except in cases in which circumstances make it impossible to secure the signature of all partners, which circumstances shall be set forth in the statement."

SECTION 5. Chapter 425, Part IV, Hawaii Revised Statutes is repealed.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2000.

(Approved July 6, 1999.)