

1989 Senate Bill 296

Date of enactment: **April 12, 1990**  
 Date of publication\*: **April 27, 1990**

## 1989 WISCONSIN ACT 232

AN ACT *to repeal* 179.02 (3), 179.11 (1) (b) and (e) to (L), 179.12 (2) (a), 179.21 (2), 179.23 (2) (d) and 179.82 (3); *to renumber* 179.21 (1); *to renumber and amend* 179.24 (2) (a) and (b) and 179.42 (1); *to amend* 179.01 (1) and (6), 179.05 (1) (a), 179.11 (1) (intro.), (d) and (m), 179.12 (2) (c), (2m) and (3), 179.14 (1) (a) and (b) and (2), 179.15, 179.16 (1) (intro.), 179.18, 179.185 (2), 179.21 (title), 179.23 (1) and (2) (a), (c) and (e) (intro.) and 2, 179.24 (2) (intro.), 179.31, 179.32 (4) (intro.) and (5) (intro.), 179.42 (2), 179.43, 179.44, 179.51 (2), 179.53, 179.55, 179.58 (3), 179.64 (1) (a) and (2), 179.71 (1) and (3), 179.74 (intro.) and 179.92; *to repeal and recreate* 179.82 (7); and *to create* 179.05 (1) (e), 179.105, 179.11 (1) (dm), 179.21 (1), 179.23 (2) (e) 6 to 9 and (f) to (i), 179.42 (1), 179.71 (1m), 179.82 (8) and 946.13 (11) of the statutes, **relating to:** changes to the uniform limited partnership act.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 179.01 (1) and (6) of the statutes are amended to read:

179.01 (1) "Certificate of limited partnership" means the certificate under s. 179.11, as amended under s. 179.12 or restated under s. 179.185.

(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner under the partnership agreement and named in the certificate of limited partnership as a limited partner.

**SECTION 2.** 179.02 (3) of the statutes is repealed.

**SECTION 3.** 179.05 (1) (a) of the statutes is amended to read:

179.05 (1) (a) A current list of the full name and last-known business address of each partner set forth, separately identifying the general partners in alphabetical order and the limited partners in alphabetical order.

**SECTION 4.** 179.05 (1) (e) of the statutes is created to read:

179.05 (1) (e) Unless contained in an effective written partnership agreement or in a certificate of limited partnership in existence on the effective date of this paragraph .... [revisor inserts date], a writing containing all of the following information:

1. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute.

2. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made.

3. Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution.

4. Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

**SECTION 5.** 179.105 of the statutes is created to read:

**179.105 Transitional provisions.** (1) A limited partnership in existence on the effective date of this subsection .... [revisor inserts date], is not required to amend or restate its certificate of limited partnership to include the information specified in s. 179.11 (1) (dm).

(2) Any provision of a certificate of limited partnership that is in existence on the effective date of this subsection .... [revisor inserts date], and that conforms with s. 179.31, 179.32 (4) (intro.) or (5) (intro.), 179.42 (1), 179.53, 179.55, 179.64 (1) (a) or 179.71 (1) or (3), 1987 stats., is enforceable on and after the effective date of this subsection .... [revisor inserts date], to the same extent

that the provision would be enforceable under s. 179.31, 179.32 (4) (intro.) or (5) (intro.), 179.42 (1m), 179.53, 179.55, 179.64 (1) (a) or 179.71 (1m) or (3) if included in a partnership agreement.

(3) If the application of s. 179.43, 179.54 or 179.74 to a limited partnership existing on September 1, 1984, would impair any contract provision in existence on September 1, 1984, s. 179.43, 179.54 or 179.74 does not apply to the limited partnership until the expiration of the contract or unless the parties to the contract agree otherwise.

**SECTION 6.** 179.11 (1) (intro.), (d) and (m) of the statutes are amended to read:

179.11 (1) (intro.) A To form a limited partnership may be formed by at least 2 persons executing and filing, a certificate of limited partnership must be executed and filed in the office of the secretary of state a certificate of limited partnership. The certificate shall be filed together with a fee of \$70 and shall contain all of the following information:

(d) The name and business address of each general partner, specifying the general partners and limited partners.

(m) Any other matters the general partners determine to include.

**SECTION 7.** 179.11 (1) (b) and (e) to (L) of the statutes are repealed.

**SECTION 8.** 179.11 (1) (dm) of the statutes is created to read:

179.11 (1) (dm) The latest date upon which the limited partnership is to dissolve, except as provided in s. 179.105.

**SECTION 9.** 179.12 (2) (a) of the statutes is repealed.

**SECTION 10.** 179.12 (2) (c), (2m) and (3) of the statutes are amended to read:

179.12 (2) (c) The withdrawal of a general partner.

(2m) Within 60 days after the admission of a new general partner, an amendment to a certificate of limited partnership reflecting the event shall be filed.

(3) 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 shall promptly amend the certificate, but an amendment to show a change of address of a limited partner need be filed only once every 12 months.

**SECTION 11.** 179.14 (1) (a) and (b) and (2) of the statutes are amended to read:

179.14 (1) (a) An original certificate of limited partnership must be signed by all general partners named in the certificate.

(b) A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner or whose contribution is described as having been increased.

(2) 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 general partner must specifically describe the admission or increase.

**SECTION 12.** 179.15 of the statutes is amended to read:

**179.15** (title) **Execution of certificate by court order.** If a person required by s. 179.14 to execute a any certificate of amendment or cancellation fails or refuses to do so, any other partner, and any assignee of a partnership interest, person who is adversely affected by the failure or refusal, may petition the circuit court to direct the amendment or cancellation execution of the certificate. If the court finds that the amendment or cancellation it is proper for the certificate to be executed 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.

**SECTION 13.** 179.16 (1) (intro.) of the statutes is amended to read:

179.16 (1) (intro.) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation under s. 179.15 or of any court order of amendment or cancellation under s. 179.15 shall be delivered to the secretary of state. A person who executes a certificate as an officer, general partner or fiduciary need not exhibit evidence of his or her authority as a prerequisite to filing. Unless the document does not conform to law, upon receipt of all filing fees the secretary of state shall do all of the following:

**SECTION 14.** 179.18 of the statutes is amended to read:

**179.18** **Notice conferred by filing.** The fact that a certificate of limited partnership is on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated as limited general partners are limited general partners, but it is not notice of any other fact.

**SECTION 15.** 179.185 (2) of the statutes is amended to read:

179.185 (2) If the restated certificate does not further amend the original certificate, as amended under this subchapter, it shall be executed by a general partner. If the restated certificate further amends the original certificate, as amended under this subchapter, it shall be executed by at least one general partner and by each other general partner designated in the restated certificate as a new general partner or a partner whose contribution has been increased.

**SECTION 16.** 179.21 (title) of the statutes is amended to read:

**179.21** (title) **Admission of limited partners.**

**SECTION 17.** 179.21 (1) of the statutes is renumbered 179.21 (1m).

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**SECTION 18.** 179.21 (1) of the statutes is created to read:

179.21 (1) A person becomes a limited partner when the limited partnership is formed or at any later time specified in the records of the limited partnership for becoming a limited partner.

**SECTION 19.** 179.21 (2) of the statutes is repealed.

**SECTION 20.** 179.23 (1) and (2) (a), (c) and (e) (intro.) and 2 of the statutes are amended to read:

179.23 (1) Except as provided in sub. (4), a limited partner is not liable for the obligations of a limited partnership unless he or she is also a general partner or, in addition to the exercise of his or her rights and powers as a limited partner, he or she ~~takes part~~ participates in the control of the business. If the limited partner's ~~participation~~ partner participates in the control of the business is not substantially the same as the exercise of the powers of a general partner, he or she is liable only to persons who transact business with the limited partnership with actual knowledge of his or her participation in control reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(2) (a) Being a contractor for or an agent or employe of the limited partnership or of a general partner, or being an officer, director or shareholder of a general partner that is a corporation.

(c) Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership.

(e) (intro.) ~~Voting on Proposing, approving or disapproving, by voting or otherwise,~~ one or more of the following matters:

2. 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.~~

**SECTION 21.** 179.23 (2) (d) of the statutes is repealed.

**SECTION 22.** 179.23 (2) (e) 6. to 9. and (f) to (i) of the statutes are created to read:

179.23 (2) (e) 6. The removal of a limited partner or the admission of an additional limited partner.

7. A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners.

8. An amendment to the partnership agreement or certificate of limited partnership.

9. Matters related to the business of the limited partnership, other than those described in this subsection, that the partnership agreement states in writing may be subject to the approval or disapproval of limited partners.

(f) Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership.

(g) Requesting or attending a meeting of partners.

(h) Winding up the limited partnership under s. 179.73.

(i) Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection.

**SECTION 23.** 179.24 (2) (intro.) of the statutes is amended to read:

179.24 (2) (intro.) A person who makes a contribution of the kind described under sub. (1) is liable as a general partner to any 3rd party who ~~transacts~~ satisfies all of the following conditions:

(a) ~~Transacts~~ business with the enterprise before any of the following occurs:

**SECTION 24.** 179.24 (2) (a) and (b) of the statutes are renumbered 179.24 (2) (a) 1. and 2. and amended to read:

179.24 (2) (a) 1. ~~Before the~~ The person withdraws and an appropriate certificate is filed to show withdrawal; ~~or,~~

2. ~~Before an~~ An appropriate certificate is filed to show his or her status as a limited partner and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under s. 179.12, but in either case only if the 3rd party ~~actually~~ that the person is not a general partner.

(b) ~~Actually~~ believed in good faith that the person was a general partner at the time of the transaction.

**SECTION 25.** 179.31 of the statutes is amended to read:

**179.31 Admission of additional general partners.**

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted ~~only as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the specific written consent of each partner unless otherwise provided in the certificate of limited partnership, but in no case with less than the specific written consent of a majority of the limited partner~~ all of the partners, except as provided in s. 179.105 (2).

**SECTION 26.** 179.32 (4) (intro.) and (5) (intro.) of the statutes are amended to read:

179.32 (4) (intro.) Unless otherwise provided in writing in the ~~certificate of limited partnership agreement or in a certificate of limited partnership under s. 179.105 (2),~~ the general partner:

(5) (intro.) Unless otherwise provided in writing in the ~~certificate of limited partnership agreement or in a certificate of limited partnership under s. 179.105 (2),~~ if:

**SECTION 27.** 179.42 (1) of the statutes is renumbered 179.42 (1m) and amended to read:

179.42 (1m) Except as provided in the ~~certificate of limited partnership agreement or in a certificate of limited partnership under s. 179.105 (2),~~ a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he or she is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or ser-

vices, he or she is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the ~~certificate of limited partnership records required to be kept under s. 179.05~~, of the stated contribution that has not been made.

**SECTION 28.** 179.42 (1) of the statutes is created to read:

179.42 (1) A promise by a limited partner to contribute to the limited partnership is not enforceable unless specified in writing and signed by the limited partner or specified in a provision of the certificate of limited partnership in existence on the effective date of this subsection .... [revisor inserts date].

**SECTION 29.** 179.42 (2) of the statutes is amended to read:

179.42 (2) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership ~~who may enforce the original obligation if the creditor extends credit or whose claim arises otherwise acts in reliance on the obligation~~ after the ~~filing of the certificate of limited partnership or a certificate of amendment partner signs a writing~~ which reflects the obligation, and before ~~a certificate of amendment or cancellation to reflect reflecting~~ the compromise, ~~may enforce the original obligation is filed.~~

**SECTION 30.** 179.43 of the statutes is amended to read:

**179.43 Sharing of profits and losses.** The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the ~~certificate of limited partnership records required to be kept under s. 179.05~~, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. This section does not apply to a limited partnership described in s. 179.105 (3).

**SECTION 31.** 179.44 of the statutes is amended to read:

**179.44 Sharing of distributions.** Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value, as stated in the ~~certificate of limited partnership records required to be kept under s. 179.05~~, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

**SECTION 32.** 179.51 (2) of the statutes is amended to read:

179.51 (2) If any distribution constitutes a return of any part of his or her contribution under s. 179.58 (2), to the extent and at the times or upon the happening of the events specified in the provisions of a certificate of limited partnership that are in existence on the effective date of this subsection .... [revisor inserts date].

**SECTION 33.** 179.53 of the statutes is amended to read:

**179.53 Withdrawal of limited partner.** A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified ~~in the certificate of limited partnership and in accordance with in writing~~ in the partnership agreement, except as provided in s. 179.105 (2). If the certificate agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than 6 months' prior written notice to each general partner at his or her address on the books of the limited partnership at its record office in this state.

**SECTION 34.** 179.55 of the statutes is amended to read:

**179.55 Distribution in kind.** Except as provided in writing in the ~~certificate of limited partnership agreement or in a certificate of limited partnership under s. 179.105 (2)~~, a partner has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing 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 or her exceeds a percentage of that asset which is equal to the percentage in which he or she shares in distributions from the limited partnership.

**SECTION 35.** 179.58 (3) of the statutes is amended to read:

179.58 (3) A partner receives a return of his or her contribution to the extent that a distribution to him or her reduces his or her share of the fair value of the net assets of the limited partnership below the value, as set forth in the ~~certificate of limited partnership records required to be kept under s. 179.05~~, of his or her contribution which has not been distributed to him or her.

**SECTION 36.** 179.64 (1) (a) and (2) of the statutes are amended to read:

179.64 (1) (a) The assignor gives the assignee that right in accordance with authority described in the ~~certificate of limited partnership agreement, except as provided in s. 179.105 (2);~~ or

(2) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An

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assignee who becomes a limited partner also is liable for the obligations of the assignor to make and return contributions as provided in ~~subch. subchs. V and VI~~. The assignee is not obligated for liabilities unknown to the assignee at the time he or she became a limited partner ~~and which could not be ascertained from the certificate of limited partnership.~~

**SECTION 37.** 179.71 (1) and (3) of the statutes are amended to read:

179.71 (1) At the time ~~or on the happening of events~~ specified in the certificate of limited partnership.

(3) An event of withdrawal of a general partner unless at the time there is at least one other general partner and the ~~certificate of limited~~ written provisions of the partnership permits agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal; if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired.

**SECTION 38.** 179.71 (1m) of the statutes is created to read:

179.71 (1m) Upon the happening of events specified in writing in the partnership agreement, except as provided in s. 179.105 (2).

**SECTION 39.** 179.74 (intro.) of the statutes is amended to read:

**179.74 Distribution of assets.** (intro.) ~~On~~ Except as provided in s. 179.105 (3), on the winding up of a limited partnership, the assets shall be distributed in the following order:

**SECTION 40.** 179.82 (3) of the statutes is repealed.

**SECTION 41.** 179.82 (7) of the statutes is repealed and recreated to read:

179.82 (7) The name and business address of each general partner.

**SECTION 42.** 179.82 (8) of the statutes is created to read:

179.82 (8) The address of the office at which the foreign limited partnership keeps a list of the names and addresses of the limited partners and their capital contributions, and an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

**SECTION 43.** 179.92 of the statutes is amended to read:

**179.92 Proper plaintiff.** In a derivative action, the plaintiff must be a partner at the time of bringing the action and must satisfy any of the following conditions:

(1) At Have been a partner at the time of the transaction which is the subject of the complaint; ~~or,~~

(2) ~~The plaintiff's~~ Derive his or her status as a partner derived from by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

**SECTION 43b.** 946.13 (11) of the statutes is created to read:

946.13 (11) Subsection (1) does not apply to an individual who receives compensation for services as a public officer or public employe of less than \$10,000 annually, exclusive of advances or reimbursements for expenses, merely because that individual is a partner, shareholder or employe of a law firm that serves as legal counsel to the public body that the officer or employe serves, unless one of the following applies:

(a) The individual has an interest in that law firm greater than 2% of its net profit or loss.

(b) The individual participates in making a contract between that public body and that law firm or exercises any official discretion with respect to a contract between them.

(c) The individual's compensation from the law firm directly depends on the individual's procurement of business with public bodies.

**SECTION 44. Initial applicability.** The treatment of section 179.42 (2) of the statutes first applies to a creditor who extends credit or acts in reliance on a partner's obligation on the effective date of this SECTION.