

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1953



ENROLLED

HOUSE BILL No. 170

(By Mr. Ballard & Mr. Richardson)



PASSED March 13 1953

In Effect thirty days from Passage



170

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House Bill No. 170

(By MR. BALLARD and MR. RICHARDSON)

[Passed March 13, 1953; in effect ninety days from passage.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article eight-a, relating to partnerships.

Be it enacted by the Legislature of West Virginia:

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, to be designated article eight-a, to read as follows:

Section 1. *Name of Act.*—This article may be cited
2 as the Uniform Partnership Act.

Sec. 2. *Definition of Terms.*—In this article, “Court”
2 includes every court and judge having jurisdiction in
3 the case.

4 “Business” includes every trade, occupation, or pro-
5 fession.

6 "Person" includes individuals, partnerships, corpora-
7 tions, and other associations.

8 "Bankrupt" includes bankrupt under the Federal Bank-
9 ruptcy Act or insolvent under any state insolvent act.

10 "Conveyance" includes every assignment, lease, mort-
11 gage, or encumbrance.

12 "Real property" includes land and any interest or estate
13 in land.

Sec. 3. *Interpretation of Knowledge and Notice.*—(1)

2 A person has "knowledge" of a fact within the meaning
3 of this article not only when he has actual knowledge
4 thereof, but also when he has knowledge of such other
5 facts as in the circumstances shows bad faith.

6 (2) A person has "notice" of a fact within the meaning
7 of this article when the person who claims the benefit
8 of the notice:

9 (a) States the fact to such person, or

10 (b) Delivers through the mail, or by other means of
11 communication, a written statement of the fact to such
12 person or to a proper person at his place of business
13 or residence.

Sec. 4. *Rules of Construction.*—(1) The rule that
2 statutes in derogation of the common law are to be
3 strictly construed shall have no application to this article.

4 (2) The law of estoppel shall apply under this article.

5 (3) The law of agency shall apply under this article.

6 (4) This article shall be so interpreted and construed
7 as to effect its general purpose to make uniform the
8 law of those states which enact it.

9 (5) This article shall not be construed so as to impair
10 the obligations of any contract existing when the article
11 goes into effect, nor to affect any action or proceedings
12 begun or right accrued before this article takes effect.

Sec. 5. *Rules for Cases not Provided for in this Article.*—

2 In any case not provided for in this article the rules of
3 law and equity, including the law merchant, shall govern.

Sec. 6. *Partnership Defined.*—(1) A partnership is
2 an association of two or more persons to carry on as
3 co-owners a business for profit.

4 (2) But any association formed under any other statute
5 of this state, or any statute adopted by authority, other
6 than the authority of this state, is not a partnership under

7 this article, unless such association would have been a
8 partnership in this state prior to the adoption of this arti-
9 cle; but this article shall apply to limited partnerships
10 except insofar as the statutes relating to such partnerships
11 are inconsistent herewith.

12 *Sec. 7. Rules for Determining the Existence of a Part-*
13 *nership.*—In determining whether a partnership exists,
14 these rules shall apply:

15 (1) Except as provided by section sixteen persons who
16 are not partners as to each other are not partners as to
17 third persons.

18 (2) Joint tenancy, tenancy in common, tenancy by
19 the entireties, joint property, common property, or part
20 ownership does not of itself establish a partnership,
21 whether such co-owners do or do not share any profits
22 made by the use of the property.

23 (3) The sharing of gross returns does not of itself
24 establish a partnership, whether or not the persons shar-
25 ing them have a joint or common right or interest in any
26 property from which the returns are derived.

(4) The receipt by a person of a share of the profits

17 of a business is prima facie evidence that he is a partner
18 in the business, but no such inference shall be drawn if
19 such profits were received in payment:

20 (a) As a debt by installments or otherwise,

21 (b) As wages of an employee or rent to a landlord,

22 (c) As an annuity to a widow or representative of a
23 deceased partner,

24 (d) As interest on a loan, though the amount of pay-
25 ment vary with the profits of the business,

26 (e) As the consideration for the sale of a goodwill of
27 a business or other property by installments or otherwise.

Sec. 8. *Partnership Property.*—(1) All property origi-
2 nally brought into the partnership stock or subsequently
3 acquired by purchase or otherwise, on account of the
4 partnership, is partnership property.

5 (2) Unless the contrary intention appears, property
6 acquired with partnership funds is partnership property.

7 (3) Any estate in real property may be acquired in
8 the partnership name. Title so acquired can be conveyed
9 only in the partnership name.

10 (4) A conveyance to a partnership in the partnership

11 name, though without words of inheritance, passes the
12 entire estate of the grantor unless a contrary intent
13 appears.

Sec. 9. *Partner Agent of Partnership as to Partnership*

2 *Business.*—(1) Every partner is an agent of the partner-
3 ship for the purpose of its business, and the act of every
4 partner, including the execution in the partnership name
5 of any instrument, for apparently carrying on in the
6 usual way the business of the partnership of which he
7 is a member binds the partnership, unless the partner
8 so acting has in fact no authority to act for the partnership
9 in the particular matter, and the person with whom he
10 is dealing has knowledge of the fact that he has no such
11 authority.

12 (2) An act of a partner which is not apparently for
13 the carrying on of the business of the partnership in the
14 usual way does not bind the partnership unless authorized
15 by the other partners.

16 (3) Unless authorized by the other partners or unless
17 they have abandoned the business, one or more but less
18 than all the partners have no authority to:

19 (a) Assign the partnership property in trust for
20 creditors or on the assignee's promise to pay the debts of
21 the partnership,

22 (b) Dispose of the good-will of the business,

23 (c) Do any other act which would make it impossible
24 to carry on the ordinary business of a partnership,

25 (d) Confess a judgment,

26 (e) Submit a partnership claim or liability to arbitra-
27 tion or reference.

28 (4) No act of a partner in contravention of a restric-
29 tion on authority shall bind the partnership to persons
30 having knowledge of the restriction.

Sec. 10. *Conveyance of Real Property of the Partner-*
2 *ship.*—(1) Where title to real property is in the partner-
3 ship name, any partner may convey title to such property
4 by a conveyance executed in the partnership name; but
5 the partnership may recover such property unless the
6 partner's act binds the partnership under the provisions
7 of paragraph one of section nine, or unless such property
8 has been conveyed by the grantee or a person claiming
9 through such grantee to a holder for value without know-

10 ledge that the partner, in making the conveyance, has
11 exceeded his authority.

12 (2) Where title to real property is in the name of the
13 partnership, a conveyance executed by a partner, in his
14 own name, passes the equitable interest of the partnership,
15 provided the act is one within the authority of the part-
16 ner under the provisions of paragraph one of section nine.

17 (3) Where title to real property is in the name of one
18 or more but not all the partners, and the record does not
19 disclose the right of the partnership, the partners in whose
20 name the title stands may convey title to such property,
21 but the partnership may recover such property if the part-
22 ners' act does not bind the partnership under the provisions
23 of paragraph one of section nine, unless the purchaser or
24 his assignee, is a holder for value, without knowledge.

25 (4) Where the title to real property is in the name of
26 one or more or all the partners, or in a third person in trust
27 for the partnership, a conveyance executed by a partner
28 in the partnership name, or in his own name, passes the
29 equitable interest of the partnership, provided the act is

30 one within the authority of the partner under the pro-
31 visions of paragraph one of section nine.

32 (5) Where the title to real property is in the names
33 of all the partners a conveyance executed by all the part-
34 ners passes all their rights in such property.

Sec. 11. *Partnership Bound by Admission of Partner.*—

2 An admission or representation made by any partner con-
3 cerning partnership affairs within the scope of his author-
4 ity as conferred by this article is evidence against the part-
5 nership.

Sec. 12. *Partnership Charged with Knowledge of or*

2 *Notice to Partner.*—Notice to any partner of any matter
3 relating to partnership affairs, and the knowledge of the
4 partner acting in the particular matter, acquired while
5 a partner or then present to his mind, and the knowledge
6 of any other partner who reasonably could and should
7 have communicated it to the acting partner, operate as
8 notice to or knowledge of the partnership, except in the
9 case of a fraud on the partnership committed by or with
10 the consent of that partner.

Sec. 13. *Partnership Bound by Partner's Wrongful Act.*

2 —Where, by any wrongful act or omissions of any partner
3 acting in the ordinary course of the business of the part-
4 nership or with the authority of its co-partners, loss or
5 injury is caused to any person, not being a partner in
6 the partnership, or any penalty is incurred, the partner-
7 ship is liable therefor to the same extent as the partner
8 so acting or omitting to act.

9 *Sec. 14. Partnership Bound by Partner's Breach of*
10 *Trust.*—The partnership is bound to make good the loss:

11 (a) Where one partner acting within the scope of his
12 apparent authority receives money or property of a third
13 person and misapplies it; and

14 (b) Where the partnership in the course of its business
15 receives money or property of a third person and the
16 money or property so received is misapplied by any part-
17 ner while it is in the custody of the partnership.

18 *Sec. 15. Nature of Partner's Liability.*—All partners
19 are liable:

20 (a) Jointly and severally for everything chargeable
21 to the partnership under sections thirteen and fourteen.

22 (b) Jointly for all other debts and obligations of the

6 partnership; but any partner may enter into a separate
7 obligation to perform a partnership contract.

Sec. 16. *Partner by Estoppel.*—(1) When a person, by
2 words spoken or written or by conduct, represents him-
3 self, or consents to another representing him to any one,
4 as a partner in an existing partnership or with one or
5 more persons not actual partners, he is liable to any such
6 person to whom such representation has been made, who
7 has, on the faith of such representation, given credit to
8 the actual or apparent partnership, and if he has made
9 such representation or consented to its being made in a
10 public manner he is liable to such person, whether the
11 representation has or has not been made or communicated
12 to such person so giving credit by or with the knowledge
13 of the apparent partner making the representation or con-
14 senting to its being made:

15 (a) When a partnership liability results, he is liable
16 as though he were an actual member of the partnership.

17 (b) When no partnership liability results, he is liable
18 jointly with the other persons, if any, so consenting to

19 the contract or representation as to incur liability, other-
20 wise separately.

21 (2) When a person has been thus represented to be a
22 partner in an existing partnership, or with one or more
23 persons not actual partners, he is an agent of the persons
24 consenting to such representation to bind them to the
25 same extent and in the same manner as though he were
26 a partner in fact, with respect to persons who rely upon
27 the representation. Where all the members of the existing
28 partnership consent to the representation, a partnership
29 act or obligation results; but in all other cases it is the
30 joint act or obligation of the person acting and the per-
31 sons consenting to the representation.

Sec. 17. *Liability of Incoming Partner.*—A person ad-
2 mitted as a partner into an existing partnership is liable
3 for all the obligations of the partnership arising before
4 his admission as though he had been a partner when such
5 obligations were incurred, except that this liability shall
6 be satisfied only out of partnership property.

Sec. 18. *Rules Determining Rights and Duties of Part-*
2 *ners.*—The rights and duties of the partners in relation to

3 the partnership shall be determined, subject to any agree-
4 ment between them, by the following rules:

5 (a) Each partner shall be repaid his contributions,
6 whether by way of capital or advances to the partnership
7 property and share equally in the profits and surplus
8 remaining after all liabilities, including those to partners,
9 are satisfied; and must contribute towards the losses,
10 whether of capital or otherwise, sustained by the partner-
11 ship according to his share in the profits.

12 (b) The partnership must indemnify every partner
13 in respect of payments made and personal liabilities rea-
14 sonably incurred by him in the ordinary and proper con-
15 duct of its business, or for the preservation of its business
16 or property.

17 (c) A partner, who in aid of the partnership makes
18 any payment or advance beyond the amount of capital
19 which he agreed to contribute, shall be paid interest from
20 the date of the payment or advance.

21 (d) A partner shall receive interest on the capital
22 contribution by him only from the date when repayment
23 should be made.

24 (e) All partners have equal rights in the management
25 and conduct of the partnership business.

26 (f) No partner is entitled to remuneration for acting
27 in the partnership business, except that a surviving part-
28 ner is entitled to reasonable compensation for his services
29 in winding up the partnership affairs.

30 (g) No person can become a member of a partnership
31 without the consent of all the partners.

32 (h) Any difference arising as to ordinary matters con-
33 nected with the partnership business may be decided by
34 a majority of the partners; but no act in contravention
35 of any agreement between the partners may be done
36 rightfully without the consent of all the partners.

Sec. 19. *Partnership Books.*—The partnership books
2 shall be kept, subject to any agreement between the
3 partners, at the principal place of business of the partner-
4 ship, and every partner shall at all times have access to
5 and may inspect and copy any of them.

Sec. 20. *Duty of Partners to Render Information.*—
2 Partners shall render on demand true and full informa-
3 tion of all things affecting the partnership to any partner

4 or the legal representative of any deceased partner or
5 partner under legal disability.

Sec. 21. *Partner Accountable as a Fiduciary.*—(1)

2 Every partner must account to the partnership for any
3 benefit, and hold as trustee for it any profits derived
4 by him without the consent of the other partners from
5 any transaction connected with the formation, conduct,
6 or liquidation of the partnership or from any use by him
7 of its property.

8 (2) This section applies also to the representatives of
9 a deceased partner engaged in the liquidation of the
10 affairs of the partnership as the personal representatives
11 of the last surviving partner.

Sec. 22. *Right to an Account.*—Any partner shall have

2 the right to a formal account as to partnership affairs:

3 (a) If he is wrongfully excluded from the partnership
4 business or possession of its property by his co-partners,

5 (b) If the right exists under the terms of any agree-
6 ment,

7 (c) As provided by section twenty-one,

8 (d) Whenever other circumstances render it just and
9 reasonable.

Sec. 23. *Continuation of Partnership Beyond Fixed*
2 *Term.*—(1) When a partnership for a fixed term or
3 particular undertaking is continued after the termination
4 of such term or particular undertaking without any ex-
5 press agreement, the rights and duties of the partners re-
6 main the same as they were at such termination, so far as is
7 consistent with a partnership at will.

8 (2) A continuation of the business by the partners or
9 such of them as habitually acted therein during the term,
10 without any settlement or liquidation of the partnership
11 affairs, is prima facie evidence of a continuation of the
12 partnership.

Sec. 24. *Extent of Property Rights of a Partner.*—The
2 property rights of a partner are (1) his rights in specific
3 partnership property, (2) his interest in the partnership,
4 and (3) his right to participate in the management.

Sec. 25. *Nature of a Partner's Right in Specific Partner-*
2 *ship Property.*—(1) A partner is co-owner with his

3 partners of specific partnership property holding as a
4 tenant in partnership.

5 (2) The incidents of this tenancy are such that:

6 (a) A partner, subject to the provisions of this article
7 and to any agreement between the partners, has an equal
8 right with his partners to possess specific partnership
9 property for partnership purposes; but he has no right
10 to possess such property for any other purpose without
11 the consent of his partners.

12 (b) A partner's right in specific partnership property
13 is not assignable except in connection with the assign-
14 ment of rights of all the partners in the same property.

15 (c) A partner's right in specific partnership property
16 is not subject to attachment or execution, except on a
17 claim against the partnership. When partnership property
18 is attached for a partnership debt the partners, or any of
19 them, or the representatives of a deceased partner, cannot
20 claim any right under the homestead or exemption laws.

21 (d) On the death of a partner his right in specific
22 partnership property vests in the surviving partner or
23 partners, except where the deceased was the last surviving

24 partner, when his right in such property vests in his
25 legal representative. Such surviving partner or partners,
26 or the legal representative of the last surviving partner,
27 has no right to possess the partnership property for any
28 but a partnership purpose.

29 (e) A partner's right in specific partnership property
30 is not subject to dower, curtesy, or allowances to widows,
31 heirs, or next of kin.

Sec. 26. *Nature of Partner's Interest in the Partner-*
2 *ship.*—A partner's interest in the partnership is his share
3 of the profits and surplus, and the same is personal
4 property.

Sec. 27. *Assignment of Partner's Interest.*—(1) A con-
2 veyance by a partner of his interest in the partnership
3 does not of itself dissolve the partnership, nor, as against
4 the other partners in the absence of agreement, entitle
5 the assignee, during the continuance of the partnership,
6 to interfere in the management or administration of the
7 partnership business or affairs, or to require any informa-
8 tion or account of partnership transactions, or to inspect
9 the partnership books; but it merely entitles the assignee

10 to receive in accordance with his contract the profits to
11 which the assigning partner would otherwise be entitled.

12 (2) In case of a dissolution of the partnership, the
13 assignee is entitled to receive his assignor's interest and
14 may require an account from the date only of the last
15 account agreed to by all the partners.

Sec. 28. *Partner's Interest Subject to Charging Order.*—

2 (1) On due application to a competent court by any
3 judgment creditor of a partner, the court which entered
4 the judgment, order, or decree, or any other court, may
5 charge the interest of the debtor partner with payment
6 of the unsatisfied amount of such judgment debt with
7 interest thereon; and may then or later appoint a receiver
8 of his share of the profits, and of any other money due
9 or to fall due to him in respect of the partnership, and
10 make all other orders, directions, accounts and inquiries
11 which the debtor partner might have made, or which the
12 circumstances of the case may require.

13 (2) The interest charged may be redeemed at any
14 time before foreclosure, or in case of a sale being directed

15 by the court may be purchased without thereby causing
16 a dissolution:

17 (a) With separate property, by any one or more of
18 the partners, or

19 (b) With partnership property, by any one or more of
20 the partners with the consent of all the partners whose
21 interests are not so charged or sold.

22 (3) Nothing in this article shall be held to deprive a
23 partner of his right, if any, under the exemption laws,
24 as regards his interest in the partnership.

Sec. 29. *Dissolution Defined.*—The dissolution of a part-
2 nership is the change in the relation of the partners caused
3 by any partner ceasing to be associated in the carrying
4 on as distinguished from the winding up of the business.

Sec. 30. *Partnership Not Terminated by Dissolution.*—
2 On dissolution the partnership is not terminated, but
3 continues until the winding up of partnership affairs is
4 completed.

Sec. 31. *Causes of Dissolution.*—Dissolution is caused:
2 (1) Without violation of the agreement between the
3 partners:

- 4 (a) By the termination of the definite term or par-
5 ticular undertaking specified in the agreement.
- 6 (b) By the express will of any partner when no definite
7 term or particular undertaking is specified.
- 8 (c) By the express will of all the partners who have
9 not assigned their interests or suffered them to be charged
10 for their separate debts, either before or after the termi-
11 nation of any specified term or particular undertaking,
- 12 (d) By the expulsion of any partner from the business
13 bona fide in accordance with such a power conferred by
14 the agreement between the partners;
- 15 (2) In contravention of the agreement between the
16 partners, where the circumstances do not permit a disso-
17 lution under any other provisions of this section, by the
18 express will of any partner at any time;
- 19 (3) By any event which makes it unlawful for the
20 business of the partnership to be carried on or for the
21 members to carry it on in partnership;
- 22 (4) By the death of any partner;
- 23 (5) By the bankruptcy of any partner or the partner-
24 ship;

25 (6) By decree of court under section thirty-two.

Sec. 32. *Dissolution by Decree of Court.*—(1) On appli-
2 cation by or for a partner the court shall decree a dissolu-
3 tion whenever:

4 (a) A partner has been declared a lunatic in any ju-
5 dicial proceeding or is shown to be of unsound mind,

6 (b) A partner becomes in any other way incapable of
7 performing his part of the partnership contract,

8 (c) A partner has been guilty of such conduct as tends
9 to affect prejudicially the carrying on of the business,

10 (d) A partner wilfully or persistently commits a breach
11 of the partnership agreement, or otherwise so conducts
12 himself in matters relating to the partnership business
13 that it is not reasonably practicable to carry on the busi-
14 ness in partnership with him.

15 (e) The business of the partnership can only be carried
16 on at a loss,

17 (f) Other circumstances render a dissolution equitable.

18 (2) On the application of the purchaser of a partner's
19 interest under sections twenty-seven or twenty-eight:

20 (a) After the termination of the specified term or par-
21 ticular undertaking,

22 (b) At any time if the partnership was a partnership
23 at will when the interest was assigned or when the charg-
24 ing order was issued.

Sec. 33. *General Effect of Dissolution on Authority of*
2 *Partner.*—Except so far as may be necessary to wind up
3 partnership affairs or to complete transactions begun but
4 not then finished, dissolution terminates all authority of
5 any partner to act for the partnership,

6 (1) With respect to the partners,

7 (a) When the dissolution is not by the act, bankruptcy
8 or death of a partner; or

9 (b) When the dissolution is by such act, bankruptcy or
10 death of a partner, in cases where section thirty-four so
11 requires.

12 (2) With respect to persons not partners, as declared
13 in section thirty-five.

Sec. 34. *Right of Partner to Contribution From Co-*
2 *partners After Dissolution.*—Where the dissolution is
3 caused by the act, death or bankruptcy of a partner, each

4 partner is liable to his co-partners for his share of any
5 liability created by any partner acting for the partnership
6 as if the partnership had not been dissolved unless;

7 (a) The dissolution being by act of any partner, the
8 partner acting for the partnership had knowledge of the
9 dissolution, or

10 (b) The dissolution being by the death or bankruptcy
11 of a partner, the partner acting for the partnership had
12 knowledge or notice of the death or bankruptcy.

Sec. 35. Power of Partner to Bind Partnership to Third

2 *Persons After Dissolution.*—(1) After dissolution a part-
3 ner can bind the partnership except as provided in para-
4 graph (3).

5 (a) By any act appropriate for winding up partnership
6 affairs or completing transactions unfinished at dissolu-
7 tion;

8 (b) By any transaction which would bind the partner-
9 ship if dissolution had not taken place, provided the other
10 party to the transaction:

11 (I) Had extended credit to the partnership prior to

12 dissolution and had no knowledge or notice of the disso-
13 lution; or

14 (II) Though he had not so extended credit, had never-
15 theless known of the partnership prior to dissolution, and,
16 having no knowledge or notice of dissolution, the fact of
17 dissolution had not been advertised in a newspaper of
18 general circulation in the place (or in each place if more
19 than one) at which the partnership business was regularly
20 carried on.

21 (2) The liability of a partner under paragraph (1-b)
22 shall be satisfied out of partnership assets alone when such
23 partner had been prior to dissolution:

24 (a) Unknown as a partner to the person with whom
25 the contract is made; and

26 (b) So far unknown and inactive in partnership affairs
27 that the business reputation of the partnership could not
28 be said to have been in any degree due to his connection
29 with it.

30 (3) The partnership is in no case bound by any act of
31 a partner after dissolution:

32 (a) Where the partnership is dissolved because it is

33 unlawful to carry on the business, unless the act is appro-
34 priate for winding up partnership affairs; or

35 (b) Where the partner has become bankrupt; or

36 (c) Where the partner has no authority to wind up
37 partnership affairs; except by a transaction with one who:

38 (I) Had an extended credit to the partnership prior to
39 dissolution and had no knowledge or notice of his want
40 of authority; or

41 (II) Had not extended credit to the partnership prior
42 to dissolution, and, having no knowledge or notice of his
43 want of authority, the fact of his want of authority has
44 not been advertised in the manner provided for advertis-
45 ing the fact of dissolution in paragraph (1bII).

46 (4) Nothing in this section shall affect the liability un-
47 der section sixteen of any person who after dissolution
48 represents himself or consents to another representing
49 him as a partner in a partnership engaged in carrying on
50 business.

Sec. 36. *Effect of Dissolution on Partner's Existing Lia-*

2 *bility.*—(1) The dissolution of the partnership does not

3 of itself discharge the existing liability of any partner.

4 (2) A partner is discharged from any existing liability
5 upon dissolution of the partnership by an agreement to
6 that effect between himself, the partnership creditor and
7 the person or partnership continuing the business; and
8 such agreement may be inferred from the course of deal-
9 ing between the creditor having knowledge of the dissolu-
10 tion and the person or partnership continuing the busi-
11 ness.

12 (3) Where a person agrees to assume the existing obli-
13 gations of a dissolved partnership, the partners whose ob-
14 ligations have been assumed shall be discharged from
15 any liability to any creditor of the partnership who, know-
16 ing of the agreement, consents to a material alteration in
17 the nature or time of payment of such obligations.

18 (4) The individual property of a deceased partner shall
19 be liable for all obligations of the partnership incurred
20 while he was a partner but subject to the prior payment
21 of his separate debts.

22 *Sec. 37. Right to Wind Up.*—Unless otherwise agreed
23 the partners who have not wrongfully dissolved the part-
24 nership or the legal representative of the last surviving

4 partner, not bankrupt, has the right to wind up the part-
5 nership affairs: *Provided, however,* That any partner, his
6 legal representative or his assignee, upon cause shown,
7 may obtain winding up by the court.

Sec. 38. *Rights of Partners to Application of Partnership*

2 *Property.*—(1) When dissolution is caused in any way,
3 except in contravention of the partnership agreement,
4 each partner, as against his co-partners and all persons
5 claiming through them in respect of their interests in the
6 partnership, unless otherwise agreed, may have the part-
7 nership property applied to discharge its liabilities, and
8 the surplus applied to pay in cash the net amount owing
9 to the respective partners. But if dissolution is caused
10 by expulsion of a partner, bona fide under the partnership
11 agreement and if the expelled partner is discharged from
12 all partnership liabilities, either by payment or agreement
13 under section thirty-six (2), he shall receive in cash only
14 the net amount due him from the partnership.

15 (2) When dissolution is caused in contravention of the
16 partnership agreement the rights of the partners shall be
17 as follows:

18 (a) Each partner who has not caused dissolution wrong-
19 fully shall have,

20 (I) All the rights specified in paragraph (1) of this
21 section, and

22 (II) The right, as against each partner who has caused
23 the dissolution wrongfully, to damages for breach of the
24 agreement.

25 (b) The partners who have not caused the dissolution
26 wrongfully, if they all desire to continue the business in
27 the same name, either by themselves or jointly with
28 others, may do so, during the agreed term for the partner-
29 ship and for that purpose may possess the partnership
30 property, provided they secure the payment by bond ap-
31 proved by the court, or pay to any partner who has caused
32 the dissolution wrongfully, the value of his interest in the
33 partnership at the dissolution, less any damages recover-
34 able under clause (2aII) of this section, and in like manner
35 indemnify him against all present or future partnership
36 liabilities.

37 (c) A partner who has caused the dissolution wrong-
38 fully shall have:

39 (I) If the business is not continued under the provisions
40 of paragraph (2-b) all the rights of a partner under para-
41 graph (1), subject to clause (2aII), of this section,

42 (II) If the business is continued under paragraph (2-b)
43 of this section the right as against his co-partners and all
44 claiming through them in respect of their interests in the
45 partnership, to have the value of his interest in the part-
46 nership, less any damages caused to his co-partners by the
47 dissolution, ascertained and paid to him in cash, or the
48 payment secured by bond approved by the court, and to
49 be released from all existing liabilities of the partnership;
50 but in ascertaining the value of the partner's interest the
51 value of the good-will of the business shall not be con-
52 sidered.

Sec. 39. Rights Where Partnership is Dissolved for Fraud

2 *or Misrepresentation.*—Where a partnership contract is
3 rescinded on the ground of the fraud or misrepresentation
4 of one of the parties thereto, the party entitled to rescind
5 is, without prejudice to any other right, entitled,

6 (a) To a lien on, or right of retention of, the surplus
7 of the partnership property after satisfying the partner-

8 ship liabilities to third persons for any sum of money
9 paid by him for the purchase of an interest in the partner-
10 ship and for any capital or advances contributed by him;
11 and

12 (b) To stand, after all liabilities to third persons have
13 been satisfied, in the place of the creditors of the partner-
14 ship for any payments made by him in respect of the
15 partnership liabilities; and

16 (c) To be indemnified by the person guilty of the
17 fraud or making the representation against all debts and
18 liabilities of the partnership.

19 Sec. 40. *Rules for Distribution.*—In settling accounts
2 between the partners after dissolution, the following rules
3 shall be observed, subject to any agreement to the con-
4 trary:

5 (a) The assets of the partnership are:

6 (I) The partnership property,

7 (II) The contributions of the partners necessary for
8 the payment of all the liabilities specified in clause (b) of
9 this paragraph.

10 (b) The liabilities of the partnership shall rank in order
11 of payment, as follows:

12 (I) Those owing to creditors other than partners,

13 (II) Those owing to partners other than for capital
14 and profits,

15 (III) Those owing to partners in respect of capital,

16 (IV) Those owing to partners in respect of profits.

17 (c) The assets shall be applied in the order of their
18 declaration in clause (a) of this paragraph to the satis-
19 faction of the liabilities.

20 (d) The partners shall contribute, as provided by sec-
21 tion eighteen (a) the amount necessary to satisfy the
22 liabilities; but if any, but not all, of the partners are
23 insolvent, or, not being subject to process, refuse to con-
24 tribute, the other partners shall contribute their share of
25 the liabilities, and, in the relative proportions in which
26 they share the profits, the additional amount necessary
27 to pay the liabilities.

28 (e) An assignee for the benefits of creditors or any
29 person appointed by the court shall have the right to en-

30 force the contributions specified in clause (d) of this
31 paragraph.

32 (f) Any partner or his legal representative shall have
33 the right to enforce the contributions specified in clause
34 (d) of this paragraph, to the extent of the amount which
35 he has paid in excess of his share of the liability.

36 (g) The individual property of a deceased partner
37 shall be liable for the contributions specified in clause (d)
38 of this paragraph.

39 (h) When partnership property and the individual
40 properties of the partners are in possession of a court for
41 distribution, partnership creditors shall have priority on
42 partnership property and separate creditors on individual
43 property, saving the rights of lien or secured creditors as
44 heretofore.

45 (i) Where a partner has become bankrupt or his estate
46 is insolvent the claims against his separate property shall
47 rank in the following order:

48 (I) Those owing to separate creditors,

49 (II) Those owing to partnership creditors,

50 (III) Those owing to partners by way of contribution.

Sec. 41. *Liability of Persons Continuing the Business*

2 *in Certain Cases.*—(1) When any new partner is ad-
3 mitted into an existing partnership, or when any partner
4 retires and assigns (or the representative of the deceased
5 partner assigns) his rights in partnership property to two
6 or more of the partners, or to one or more of the partners
7 and one or more third persons, if the business is continued
8 without liquidation of the partnership affairs, creditors
9 of the first or dissolved partnership are also creditors
10 of the partnership so continuing the business.

11 (2) When all but one partner retire and assign (or
12 the representative of a deceased partner assigns) their
13 rights in partnership property to the remaining partner,
14 who continues the business without liquidation of partner-
15 ship affairs, either alone or with others, creditors of the
16 dissolved partnership are also creditors of the person or
17 partnership so continuing the business.

18 (3) When any partner retires or dies and the business
19 of the dissolved partnership is continued as set forth in
20 paragraphs (1) and (2) of this section, with the consent
21 of the retired partners or the representative of the

22 deceased partner, but without any assignment of his
23 right in partnership property, rights of creditors of the
24 dissolved partnership and of the creditors of the person
25 or partnership continuing the business shall be as if
26 such assignment had been made.

27 (4) When all the partners or their representatives
28 assign their rights in partnership property to one or more
29 third persons who promise to pay the debts and who
30 continue the business of the dissolved partnership,
31 creditors of the dissolved partnership are also creditors
32 of the person or partnership continuing the business.

33 (5) When any partner wrongfully causes a dissolution
34 and the remaining partners continue the business under
35 the provisions of section thirty-eight, (2-b), either alone
36 or with others, and without liquidation of the partnership
37 affairs, creditors of the dissolved partnership are also
38 creditors of the person or partnership continuing the
39 business.

40 (6) When a partner is expelled and the remaining
41 partners continue the business either alone or with others,
42 without liquidation of the partnership affairs, creditors

43 of the dissolved partnership are also creditors of the
44 person or partnership continuing the business.

45 (7) The liability of a third person becoming a partner
46 in the partnership continuing the business, under this
47 section, to the creditors of the dissolved partnership shall
48 be satisfied out of partnership property only.

49 (8) When the business of a partnership after dissolu-
50 tion is continued under any conditions set forth in this
51 section the creditors of the dissolved partnership, as
52 against the separate creditors of the retiring or deceased
53 partner or the representative of the deceased partner,
54 have a prior right to any claim of the retired partner or
55 the representative of the deceased partner against the
56 person or partnership continuing the business, on account
57 of the retired or deceased partner's interest in the dis-
58 solved partnership or on account of any consideration
59 promised for such interest or for his right in partnership
60 property.

61 (9) Nothing in this section shall be held to modify
62 any right of creditors to set aside any assignment on the
63 ground of fraud.

64 (10) The use by the person or partnership continuing
65 the business of the partnership name, or the name of a
66 deceased partner as a part thereof, shall not of itself make
67 the individual property of the deceased partner liable
68 for any debts contracted by such person or partnership.

Sec. 42. *Rights of Retiring or Estate of Deceased Part-*
2 *ner When the Business is Continued.*—When any partner
3 retires or dies, and the business is continued under any
4 of the conditions set forth in section forty-one (1, 2, 3,
5 5, 6) or section thirty-eight (1-b), without any settlement
6 of accounts as between him or his estate and the person
7 or partnership continuing the business, unless otherwise
8 agreed, he or his legal representative as against such
9 persons or partnership may have the value of his interest
10 at the date of dissolution ascertained, and shall receive
11 as an ordinary creditor an amount equal to the value of
12 his interest in the dissolved partnership with interest,
13 or, at his option or at the option of his legal representative,
14 in lieu of interest, the profits attributeable to the use
15 of his right in the property of the dissolved partnership:
16 *Provided, That the creditors of the dissolved partnership*

17 as against the separate creditors, or the representative of
18 the retired or deceased partner, shall have priority on any
19 claim arising under this section, as provided by section
20 forty-one (8) of this article.

Sec. 43. *Accrual of Actions.*—The right to an account
2 of his interest shall accrue to any partner, or his legal
3 representative, as against the winding up partners or the
4 surviving partners or the person or partnership continu-
5 ing the business, at the date of dissolution, in the absence
6 of any agreement to the contrary.

Sec. 44. *Suit for Accounting Not to Work Dissolution*
2 *of Mining Partnership; Sale of Interest.*—Any member
3 or members of a mining partnership may institute and
4 prosecute to final decree a suit in equity for an account-
5 ing among the members of the partnership without the
6 dissolution thereof. Upon such accounting the court shall
7 decree the sale of the undivided interest or interests
8 of such member or members as may be ascertained to
9 be indebted to any member or members, or to the partner-
10 ship, without decreeing the dissolution thereof, unless
11 such dissolution shall be necessary to enable a fair sale

12 of such undivided interest or interests to be made in
13 such suit.

Sec. 45. *Legislation Repealed.*—All acts or parts of acts
2 inconsistent with this article are hereby repealed.

Handwritten signature

RECEIVED
MAR 3 1888
STATE OF IOWA
OFFICE OF THE
COMMISSIONER OF
LANDS AND MINES
DES MOINES, IOWA

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

L. M. Kinley
Chairman Senate Committee

C. H. Auble
Chairman House Committee

Originated in the House of Delegates

Takes effect *thirty days from* passage.

H. Howard Meyer
Clerk of the Senate

J. S. [unclear]
Clerk of the House of Delegates

Joseph Bean
President of the Senate

W. E. Flannery
Speaker House of Delegates

The within *approved* this the *20th* day of *March*, 1953.

William C. Marland
Governor



FILED IN THE OFFICE OF THE SECRETARY OF STATE
of VIRGINIA
MAR 20 1953
D. PITT O'BRIEN,
SECRETARY OF STATE