

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1953



ENROLLED

HOUSE BILL No. 171

(By Mr. Ballard & Mr. Richardson)



PASSED March 13. 1953

In Effect ninety days from Passage



171

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AN ACT to repeal article nine, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article nine, relating to limited partnerships.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and that a new article nine be enacted in lieu thereof, to read as follows:

Section 1. *Limited Parternership Defined.*—A limited
2 parternership is a partnership formed by two or more
3 persons under the provisions of section two of this article,
4 having as members one or more general partners and one

5 or more limited partners. The limited partners as such
6 shall not be bound by the obligations of the partnership.

Sec. 2. *Formation*.—(1) Two or more persons desiring
2 to form a limited partnership shall:

3 (a) Sign and swear to a certificate, which shall state:

4 I. The name of the partnership,

5 II. The character of the business,

6 III. The location of the principal place of business,

7 IV. The name and place of residence of each member;

8 general and limited partners being respectively designated,

9 V. The term for which the partnership is to exist,

10 VI. The amount of cash and a description of and the
11 agreed value of the other property contributed by each
12 limited partner,

13 VII. The additional contributions, if any, agreed to be
14 made by each limited partner and the times at which
15 or events on the happenings of which they shall be made,

16 VIII. The time, if agreed upon, when the contribution
17 of each limited partner is to be returned,

18 IX. The share of the profits or the other compensa-
19 tion by way of income which each limited partner shall
20 receive by reason of his contribution,

21 X. The right, if given, of a limited partner to sub-
22 stitute an assignee as contributor in his place, and the
23 terms and conditions of the substitution,

24 XI. The right, if given, of the partners to admit addi-
25 tional limited partners,

26 XII. The right, if given, of one or more of the limited
27 partners to priority over other limited partners, as to
28 contributions or as to compensation by way of income,
29 and the nature of such priority,

30 XIII. The right, if given, of the remaining general
31 partner or partners to continue the business on the death,
32 retirement or insanity of a general partner, and

33 XIV. The right, if given, of a limited partner to demand
34 and receive property other than cash in return for his
35 contribution.

36 (b) File for record the certificate in the office of the
37 clerk of the county court of each county in which such
38 partnership has a place of business.

39 (2) A limited partnership is formed if there has been
40 substantial compliance in good faith with the require-
41 ments of paragraph (1) of this section.

Sec. 3. *Business Which May Be Carried On.*—A limited partnership may carry on any business which a partnership without limited partners may carry on, except the business of banking, brokerage, or making insurance.

Sec. 4. *Character of Limited Partner's Contribution.*—The contributions of a limited partner may be cash or other property, but not services.

Sec. 5. *A Name Not to Contain Surname of Limited*

Partner: Exceptions.—(1) The surname of a limited partner shall not appear in the partnership name, unless:

(a) It is also the surname of a general partner, or

(b) Prior to the time when the limited partner became such the business had been carried on under a name in which his surname appeared.

(2) A limited partner whose name appears in a partnership name contrary to the provisions of paragraph (1) of this section is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

Sec. 6. *Liability for False Statements in Certificate.*—

If the certificate contains a false statement, one who

3 suffers loss by reliance on such statement may hold liable
4 any party to the certificate who knew the statement to
5 be false:

6 (a) At the time he signed the certificate, or

7 (b) Subsequently, but within a sufficient time before
8 the statement was relied upon to enable him to cancel
9 or amend the certificate, or to file a petition for its can-
10 cellation or amendment as provided in section twenty-
11 five (3) of this article.

Sec. 7. *Limited Partner Not Liable to Creditors.*—A
2 limited partner shall not become liable as a general part-
3 ner unless, in addition to the exercise of his rights and
4 powers as a limited partner, he takes part in the control
5 of the business.

Sec. 8. *Admission of Additional Limited Partners.*—
2 After the formation of a limited partnership, additional
3 limited partners may be admitted upon filing an amend-
4 ment to the original certificate in accordance with the
5 requirements of section twenty-five of this article.

Sec. 9. *Rights, Powers and Liabilities of a General*
2 *Partner.*—(1) A general partner shall have all the rights

3 and powers and be subject to all the restrictions and
4 liabilities of a partner in a partnership without limited
5 partners, except that without the written consent or
6 ratification of the specific act by all the limited partners,
7 a general partner or all of the general partners have no
8 authority to:

- 9 (a) Do any act in contravention of the certificate,
- 10 (b) Do any act which would make it impossible to
11 carry on the ordinary business of the partnership,
- 12 (c) Confess a judgment against the partnership,
- 13 (d) Possess partnership property, or assign their rights
14 in specific partnership property, for other than a partner-
15 ship purpose,
- 16 (e) Admit a person as a general partner,
- 17 (f) Admit a person as a limited partner, unless the
18 right so to do is given in the certificate,
- 19 (g) Continue the business with partnership property
20 on the death, retirement or insanity of a general partner,
21 unless the right so to do is given in the certificate.

Sec. 10. *Rights of a Limited Partner.*—(1) A limited
2 partner shall have the same rights as a general partner
3 to:

4 (a) Have the partnership books kept at the principal
5 place of business of the partnership, and at all times to
6 inspect and copy any of them,

7 (b) Have on demand true and full information of all
8 things affecting the partnership, and a formal account
9 of partnership affairs whenever circumstances render
10 it just and reasonable, and

11 (c) Have dissolution and winding up by decree of
12 court.

13 (2) A limited partner shall have the right to receive
14 a share of the profits or other compensation by way of
15 income, and to the return of his contribution as provided
16 in sections fifteen and sixteen of this article.

Sec. 11. *Status of Person Erroneously Believing Him-*

2 *self a Limited Partner.*—A person who has contributed
3 to the capital of a business conducted by a person or
4 partnership erroneously believing that he has become a
5 limited partner in a limited partnership, is not, by reason
6 of his exercise of the rights of a limited partner, a general
7 partner with the person or in the partnership carrying
8 on the business, or bound by the obligations of such

9 person or partnership: *Provided*, That on ascertaining the
10 mistake he promptly renounces his interest in the profits
11 of the business, or other compensation by way of income.

Sec. 12. *One Person both General and Limited Partner.*

2 —(1) A person may be a general partner and a limited
3 partner in the same partnership at the same time.

4 (2) A person who is a general, and also at the same
5 time a limited partner, shall have all the rights and
6 powers and be subject to all the restrictions of a general
7 partner; except that, in respect to his contribution, he
8 shall have the rights against the other members which
9 he would have had if he were not also a general partner.

Sec. 13. *Loans and Other Business Transactions with*

2 *Limited Partner.*—(1) A limited partner also may loan
3 money to and transact other business with the partner-
4 ship, and, unless he is also a general partner, receive on
5 account of resulting claims against the partnership, with
6 general creditors, a pro rata share of the assets. No
7 limited partner shall in respect to any such claim:

8 (a) Receive or hold as collateral security any partner-
9 ship property, or

10 (b) Receive from a general partner or the partnership
11 any payment, conveyance, or release from liability, if
12 at the time the assets of the partnership are not sufficient
13 to discharge partnership liabilities to persons not claim-
14 ing as general or limited partners,

15 (2) The receiving of collateral security, or a payment,
16 conveyance, or release in violation of the provisions of
17 paragraph (1) of this section is a fraud on the creditors
18 of the partnership.

Sec. 14. *Relation of Limited Partners Inter Se.*—Where
2 there are several limited partners the members may agree
3 that one or more of the limited partners shall have a
4 priority over other limited partners as to the return of
5 their contributions, as to their compensation by way of
6 income, or as to any other matter. If such an agreement
7 is made it shall be stated in the certificate, and in the
8 absence of such a statement all the limited partners shall
9 stand upon equal footing.

Sec. 15. *Compensation of Limited Partner.*—A limited
2 partner may receive from the partnership the share of
3 the profits or the compensation by way of income stipu-

4 lated for in the certificate: *Provided*, That after such pay-
5 ment is made, whether from the property of the partner-
6 ship or that of a general partner, the partnership assets
7 are in excess of all liabilities of the partnership except
8 liabilities to limited partners on account of their contribu-
9 tions and to general partners.

Sec. 16. *Withdrawal or Reduction of Limited Partner's*

2 *Contribution.*—(1) A limited partner shall not receive
3 from a general partner or out of partnership property any
4 part of his contribution until:

5 (a) All liabilities of the partnership, except liabilities
6 to general partners and to limited partners on account of
7 their contributions, have been paid or there remains prop-
8 erty of the partnership sufficient to pay them,

9 (b) The consent of all members is had, unless the re-
10 turn of the contribution may be rightfully demanded un-
11 der the provisions of paragraph (2) of this section; and

12 (c) The certificate is cancelled or so amended as to set
13 forth the withdrawal or reduction.

14 (2) Subject to the provisions of paragraph (1) of this
15 section a limited partner may rightfully demand the re-
16 turn of his contribution

17 (a) On the dissolution of a partnership, or

18 (b) When the date specified in the certificate for its
19 return has arrived, or

20 (c) After he has given six months' notice in writing
21 to all other members, if no time is specified in the certifi-
22 cate either for the return of the contribution or for the
23 dissolution of the partnership,

24 (3) In the absence of any statement in the certificate
25 to the contrary or the consent of all members, a limited
26 partner, irrespective of the nature of his contribution, has
27 only the right to demand and receive cash in return for
28 his contribution.

29 (4) A limited partner may have the partnership dis-
30 solved and its affairs wound up when

31 (a) He rightfully but unsuccessfully demands the re-
32 turn of his contribution, or

33 (b) The other liabilities of the partnership have not
34 been paid, or the partnership property is insufficient for
35 their payment as required by paragraph (1a) of this sec-
36 tion and the limited partner would otherwise be entitled
37 to the return of his contribution.

Sec. 17. *Liability of Limited Partner to Partnership.*—

2 (1) A limited partner is liable to the partnership:

3 (a) For the difference between his contribution as ac-
4 tually made and that stated in the certificate as having
5 been made, and

6 (b) For any unpaid contribution which he agreed in
7 the certificate to make in the future at the time and on
8 the conditions stated in the certificate.

9 (2) A limited partner holds as trustee for the partner-
10 ship:

11 (a) Specific property stated in the certificate as con-
12 tributed by him, but which was not contributed or which
13 has been wrongfully returned, and

14 (b) Money or other property wrongfully paid or con-
15 veyed to him on account of his contribution.

16 (3) The liabilities of a limited partner as set forth in
17 this section can be waived or compromised only by the
18 consent of all members; but a waiver or compromise shall
19 not affect the right of a creditor of a partnership, who
20 extended credit or whose claim arose after the filing and
21 before a cancellation or amendment of the certificate, to
22 enforce such liabilities.

23 (4) When a contributor has rightfully received the
24 return in whole or in part of the capital of his contribu-
25 tion, he is nevertheless liable to the partnership for any
26 sum, not in excess of such return with interest, necessary
27 to discharge its liabilities to all creditors who extended
28 credit or whose claims arose before such return.

Sec. 18. *Nature of Limited Partner's Interest in Part-*
2 *nership.*—A limited partner's interest in the partnership
3 is personal property.

Sec. 19. *Assessment of Limited Partner's Interest.*—

2 (1) A limited partner's interest is assignable.

3 (2) A substituted limited partner is a person admitted
4 to all the rights of a limited partner who has died or has
5 assigned his interest in a partnership.

6 (3) An assignee, who does not become a substituted
7 limited partner, has no right to require any information
8 or account of the partnership transactions or to inspect
9 the partnership books; he is only entitled to receive the
10 share of the profits or other compensation by way of in-
11 come, or the return of his contribution, to which his as-
12 signor would otherwise be entitled.

13 (4) An assignee shall have the right to become a sub-
14 stituted limited partner if all the members (except the
15 assignor) consent thereto or if the assignor, being there-
16 unto empowered by the certificate, gives the assignee
17 that right.

18 (5) An assignee becomes a substituted limited partner
19 when the certificate is appropriately amended in accord-
20 ance with section twenty-five of this article.

21 (6) The substituted limited partner has all the rights
22 and powers, and is subject to all the restrictions and lia-
23 bilities of his assignor, except those liabilities of which
24 he was ignorant at the time he became a limited partner
25 and which could not be ascertained from the certificate.

26 (7) The substitution of the assignee as a limited part-
27 ner does not release the assignor from liability of the part-
28 nership under sections six and seventeen of this article.

 Sec. 20. *Effect of Retirement, Death or Insanity of a*
2 *General Partner.*—The retirement, death or insanity of a
3 general partner dissolves the partnership, unless the busi-
4 ness is continued by the remaining general partners:

5 (a) Under a right so to do stated in the certificate, or

6 (b) With the consent of all members.

Sec. 21. *Death of Limited Partner.*—(1) On the death

2 of a limited partner his executor or administrator shall
3 have all the rights of a limited partner for the purpose of
4 settling his estate, and such power as the deceased had to
5 constitute his assignee a substituted limited partner.

6 (2) The estate of a deceased limited partner shall be
7 liable for all his liabilities as a limited partner.

Sec. 22. *Rights of Creditors of Limited Partner.*—(1) On

2 due application to a court of competent jurisdiction by
3 any judgment creditor of a limited partner, the court may
4 charge the interest of the indebted limited partner with
5 payment of the unsatisfied amount of the judgment debt;
6 and may appoint a receiver, and make all other orders,
7 directions, and inquiries which the circumstances of the
8 case may require.

9 (2) The interest may be redeemed with the separate
10 property of any general partner, but may not be redeemed
11 with partnership property.

12 (3) The remedies conferred by paragraph (1) of this
13 section shall not be deemed exclusive of others which may
14 exist.

15 (4) Nothing in this act shall be held to deprive a limit-
16 ed partner of his statutory exemption.

Sec. 23. *Distribution of Assets.*—(1) In settling accounts
2 after dissolution the liabilities of the partnership shall be
3 entitled to payment in the following order:

4 (a) Those to creditors, in the order of priority as pro-
5 vided by law, except those to limited partners on account
6 of their contributions, and to general partners,

7 (b) Those to limited partners in respect to their share
8 of the profits and other compensation by way of income on
9 their contributions,

10 (c) Those to limited partners in respect to the capital
11 of their contributions,

12 (d) Those to general partners other than for capital
13 and profits,

14 (e) Those to general partners in respect to profits,

15 (f) Those to general partners in respect to capital.

16 (2) Subject to any statement in the certificate or to
17 subsequent agreement, limited partners share in the part-
18 nership assets in respect to their claims for capital, and
19 in respect to their claims for profits or for compensation

20 by way of income on their contributions respectively, in
21 proportion to the respective amounts of such claims.

Sec. 24. *When Certificate Shall Be Cancelled or Amend-*

2 ed.—(1) The certificate shall be cancelled when the part-
3 nership is dissolved or all limited partners cease to be
4 such.

5 (2) A certificate shall be amended when:

6 (a) There is a change in the name of the partnership
7 or in the amount or character of the contribution of any
8 limited partner,

9 (b) A person is substituted as a limited partner,

10 (c) An additional limited partner is admitted,

11 (d) A person is admitted as a general partner,

12 (e) A general partner retires, dies or becomes insane,
13 and the business is continued under section twenty of
14 this article,

15 (f) There is a change in the character of the business
16 of the partnership,

17 (g) There is a false or erroneous statement in the cer-
18 tificate,

19 (h) There is a change in the time as stated in the cer-

20 tificate for the dissolution of the partnership or for the
21 return of a contribution,

22 (i) A time is fixed for the dissolution of the partner-
23 ship, or the return of a contribution, no time having been
24 specified in the certificate, or

25 (j) The members desire to make a change in any other
26 statement in the certificate in order that it shall accurately
27 represent the agreement between them.

Sec. 25. *Requirements for Amendment and for Cancel-*
2 *lation of Certificate.*—(1) The writing to amend a certifi-
3 cate shall

4 (a) Conform to the requirements of section two (1a)
5 of this article as far as necessary to set forth clearly the
6 change in the certificate which it is desired to make, and

7 (b) Be signed and sworn to by all members, and an
8 amendment substituting a limited partner or adding a
9 limited or general partner shall be signed also by the
10 member to be substituted or added, and when a limited
11 partner is to be substituted, the amendment shall also be
12 signed by the assigning limited partner.

13 (2) The writing to cancel a certificate shall be signed
14 by all members.

15 (3) A person desiring the cancellation or amendment
16 of a certificate, if any person designated in paragraphs
17 (1) and (2) of this section as a person who must execute
18 the writing refuses to do so, may petition the circuit court
19 of the county in which the person refusing to execute the
20 writing resides, or, at the election of the petitioner, the
21 circuit court of the county in which the principal office
22 or place of business of the partnership is located, to direct
23 a cancellation or amendment thereof.

24 (4) If the court finds that the petitioner has a right
25 to have the writing executed by a person who refuses to
26 do so, it shall order the clerk of the county court of the
27 county, or counties, where the certificate is recorded to
28 record the cancellation or amendment of the certificate;
29 and where the certificate is to be amended, the court shall
30 also cause to be filed for record in said office a certified
31 copy of its decree setting forth the amendment.

32 (5) A certificate is amended or cancelled when there
33 is filed for record in the office of the clerk of the county
34 court, or counties, where the certificate is recorded:

35 (a) A writing in accordance with the provisions of
36 paragraph (1) or (2) of this section or

37 (b) A certified copy of the order of court in accordance
38 with the provisions of paragraph (4) of this section.

39 (6) After the certificate is duly amended in accordance
40 with this section, the amended certificate shall thereafter
41 be for all purposes the certificate provided for by this
42 article.

Sec. 26. *Parties to Actions.*—A contributor, unless he is
2 a general partner, is not a proper party to proceedings by
3 or against a partnership, except where the object is to en-
4 force a limited partner's right against or liability to the
5 partnership.

Sec. 27. *Name of Act.*—This act may be cited as the
2 Uniform Limited Partnership Act.

Sec. 28. *Rules of Construction.*—(1) The rule that
2 statutes in derogation of the common law are to be strictly
3 construed shall have no application to this article.

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

7 (3) This article shall not be so construed as to impair
8 the obligations of any contract existing when the article

9 goes into effect, nor to affect any action on proceedings
10 begun or right accrued before this article takes effect.

Sec. 29. *Rules for Cases not Provided for in this Article.*—

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

Sec. 30. *Provisions for Existing Limited Partnerships.*—

2 A limited partnership formed under any statute of this
3 state prior to the enactment of this article, may become
4 a limited partnership under this article by complying with
5 the provisions of section two of this article; provided the
6 certificate sets forth:

7 (a) The amount of the original contribution of each
8 limited partner, and the time when the contribution was
9 made, and

10 (b) That the property of the partnership exceeds the
11 amount sufficient to discharge its liabilities to persons
12 not claiming as general or limited partners by an amount
13 greater than the sum of the contributions of its limited
14 partners.

15 (2) A limited partnership formed under any statute of
16 this state prior to the enactment of this article, until or

17 unless it becomes a limited partnership under this article,
18 shall continue to be governed by the provisions of chapter
19 forty-seven, article nine of this code as the same hereto-
20 fore existed, except that such partnership shall not be
21 renewed unless so provided in the original agreement.

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

F. M. Kinley
Chairman Senate Committee

C. H. Quibler
Chairman House Committee

Originated in the House of Delegates

Takes effect *ninety days from* passage.

Howard Thayer
Clerk of the Senate

Chaff
Clerk of the House of Delegates

Ralph Bran
President of the Senate

W. E. Haninger
Speaker House of Delegates

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

William C. Macland
Governor



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