

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978



ENROLLED

SENATE BILL NO. 518

(By Mr. Polumbo)



PASSED March 11, 1978

In Effect ninety days from Passage



ENROLLED

Senate Bill No. 518

(By MR. PALUMBO)

[Passed March 11, 1978; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article nine, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article nine by adding thereto a new section, designated section twenty-six-a; and to amend and reenact article three, chapter fifty-six of said code, by adding thereto a new section, designated section thirteen-a, all relating to service of process or notice on domestic limited partnerships and foreign limited partnerships; providing for certificate of limited partnership to be filed in office of secretary of state naming person authorized to accept service; providing for appointment of attorney-in-fact; providing for secretary of state to be constituted attorney-in-fact for limited partnerships; providing for process against, or notice to, limited partnerships; and providing for service by publication on foreign limited partnerships in same manner as foreign corporations.

Be it enacted by the Legislature of West Virginia:

That section two, article nine, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-six-a; and that article three, chapter fifty-six of said code be amended by adding thereto a new section, designated section thirteen-a, all to read as follows:

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-2. Formation; contents and recordation of certificate.

- 1 (1) Two or more persons desiring to form a limited
- 2 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 design-
- 9 ated, and the name and address of the person to whom
- 10 shall be sent notice or process served upon, or service of
- 11 which is accepted by the secretary of state, if such person
- 12 has been appointed by the limited partnership;
- 13 V. The term for which the partnership is to exist;
- 14 VI. The amount of cash and a description of and the
- 15 agreed value of the other property contributed by each
- 16 limited partner;
- 17 VII. The additional contributions, if any, agreed to be
- 18 made by each limited partner and the times at which or
- 19 events on the happenings of which they shall be made;
- 20 VIII. The time, if agreed upon, when the contribution
- 21 of each limited partner is to be returned;
- 22 IX. The share of the profits or the other compensation
- 23 by way of income which each limited partner shall receive
- 24 by reason of his contribution;
- 25 X. The right, if given, of a limited partner to substitute
- 26 an assignee as contributor in his place, and the terms and
- 27 conditions of the substitution;
- 28 XI. The right, if given, of the partners to admit addi-
- 29 tional limited partners;
- 30 XII. The right, if given, of one or more of the limited
- 31 partners to priority over other limited partners, as to
- 32 contributions or as to compensation by way of income,
- 33 and the nature of such priority;
- 34 XIII. The right, if given, of the remaining general part-
- 35 ner or partners to continue the business on the death,
- 36 retirement or insanity of a general partner; and
- 37 XIV. The right, if given, of a limited partner to demand
- 38 and receive property other than cash in return for his
- 39 contribution.
- 40 (b) File for record the certificate in the office of the
- 41 clerk of the county commission of each county in which

42 such partnership has a place of business and in the office
43 of the secretary of state.

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

**§47-9-26a. Secretary of state constituted attorney-in-fact for
all limited partnerships; manner of acceptance
or service of notices and process upon secretary
of state; what constitutes conducting affairs or
doing or transacting business in this state for
purposes of this section.**

1 The secretary of state is hereby constituted the at-
2 torney-in-fact for and on behalf of every limited part-
3 nership created by virtue of the laws of this state and
4 every foreign limited partnership authorized to conduct
5 affairs or do or transact business herein pursuant to the
6 provisions of this article, with authority to accept service
7 of notice and process on behalf of every such limited
8 partnership and upon whom service of notice and process
9 may be made in this state for and upon every such
10 limited partnership. No act of such limited partnership
11 appointing the secretary of state such attorney-in-fact
12 shall be necessary. Immediately after being served with
13 or accepting any such process or notice, of which process
14 or notice two copies for each defendant shall be furnished
15 the secretary of state with the original notice or process,
16 together with a fee of two dollars, the secretary of state
17 shall file in his office a copy of such process or notice,
18 with a note thereon endorsed of the time of service, or
19 acceptance, as the case may be, and transmit one copy
20 of such process or notice by registered or certified mail,
21 return receipt requested, to the person to whom notice
22 and process shall be sent, whose name and address were
23 last furnished to the state officer at the time authorized
24 by statute to accept service of notice and process and
25 upon whom notice and process may be served; and if
26 no such person has been named, to the principal office
27 of the limited partnership at the address last furnished
28 to the state officer at the time authorized by statute
29 to accept service of process and upon whom process may

30 be served, as required by law. No process or notice shall
31 be served on the secretary of state or accepted by him
32 less than ten days before the return day thereof. Such
33 limited partnership shall pay the annual fee prescribed
34 by article twelve, chapter eleven of this code for the
35 services of the secretary of state as its attorney-in-fact.

36 Any foreign limited partnership which shall conduct
37 affairs or do or transact business in this state without
38 having been authorized so to do pursuant to the pro-
39 visions of this article shall be conclusively presumed
40 to have appointed the secretary of state as its attorney-
41 in-fact with authority to accept service of notice and
42 process on behalf of such limited partnership and upon
43 whom service of notice and process may be made in
44 this state for and upon every such limited partnership
45 in any action or proceeding described in the next follow-
46 ing paragraph of this section. No act of such limited
47 partnership appointing the secretary of state as such
48 attorney-in-fact shall be necessary. Immediately after
49 being served with or accepting any such process or
50 notice, of which process or notice two copies for each
51 defendant shall be furnished the secretary of state with
52 the original notice or process, together with a fee of two
53 dollars, the secretary of state shall file in his office a
54 copy of such process or notice, with a note thereon
55 endorsed of the time of service or acceptance, as the
56 case may be, and transmit one copy of such process or
57 notice by registered or certified mail, return receipt re-
58 quested, to such limited partnership at the address of
59 its principal office, which address shall be stated in such
60 process or notice. Such service or acceptance of such
61 process or notice shall be sufficient if such return receipt
62 shall be signed by an agent or employee of such limited
63 partnership, or the registered or certified mail so sent
64 by the secretary of state is refused by the addressee and
65 the registered or certified mail is returned to the secre-
66 tary of state, or to his office, showing thereon the stamp
67 of the United States postal service that delivery thereof
68 has been refused, and such return receipt or registered or
69 certified mail is appended to the original process or

70 notice and filed therewith in the clerk's office of
71 the court from which such process or notice was
72 issued. No process or notice shall be served on the
73 secretary of state or accepted by him less than ten
74 days before the return date thereof. The court may order
75 such continuances as may be reasonable to afford each
76 defendant opportunity to defend the action or pro-
77 ceedings.

78 For the purpose of this section, a foreign limited part-
79 nership not authorized to conduct affairs or do or transact
80 business in this state pursuant to the provisions of this
81 article shall nevertheless be deemed to be conducting
82 affairs or doing or transacting business herein (a) if
83 such limited partnership makes a contract to be per-
84 formed, in whole or in part, by any party thereto, in
85 this state, (b) if such limited partnership commits a
86 tort in whole or in part in this state, or (c) if such
87 limited partnership manufactures, sells, offers for sale
88 or supplies any product in a defective condition and such
89 product causes injury to any person or property within
90 this state notwithstanding the fact that such limited
91 partnership had no agents, servants or employees or
92 contacts within this state at the time of said injury. The
93 making of such contract, the committing of such tort
94 or the manufacture or sale, offer of sale or supply of
95 such defective product as hereinabove described shall
96 be deemed to be the agreement of such limited partner-
97 ship that any notice or process served upon, or accepted
98 by, the secretary of state pursuant to the next preceding
99 paragraph of this section in any action or proceeding
100 against such limited partnership arising from, or growing
101 out of, such contract, tort, or manufacture or sale, offer
102 of sale or supply of such defective product shall be of
103 the same legal force and validity as process duly served
104 on such limited partnership in this state.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-13a. Service of process or notice on domestic and foreign limited partnerships; service by publication.

1 Process against, or notice to, a domestic limited part-

2 nership or a foreign limited partnership may be served on
3 any general partner, or on the secretary of state as statu-
4 tory attorney-in-fact of such limited partnership as pro-
5 vided in section twenty-six-a of article nine, chapter
6 forty-seven of this code, or on any other person appointed
7 by it to accept service of process in its behalf, or on any
8 agent of such limited partnership. Any foreign limited
9 partnership for which no statutory attorney-in-fact, gen-
10 eral partner or agent is found in this state upon whom
11 service may be had, shall be subject to service by publica-
12 tion under this article in the same manner and upon the
13 same conditions and requirements as are foreign corpora-
14 tions for which no statutory attorneys-in-fact, officers,
15 directors, or agents are found in this state upon whom
16 service may be had.

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

James L. Davis
Chairman Senate Committee

Clarence C. Chutkan Jr.
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. C. Wilson, Jr.
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

W. T. Brotherton Jr.
President of the Senate

Donald L. Zopp
Speaker House of Delegates

The within approved this the 30
day of March, 1978.

John J. R. Rhymer
Governor

APPROVED AND SIGNED BY THE GOVERNOR

RECEIVED

MAR 17 11 05 AM '78

OFFICE OF THE GOVERNOR

Date Mar. 30, 1978

Time 5:30 p.m.

RECEIVED

78 MAR 30 P 9:30

OFFICE
SECY. OF STATE