

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-28-81

Time \_\_\_\_\_

No: 987

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981



# ENROLLED

HOUSE BILL No. 987

(By Mr. Brenda + Mr. William)



Passed April 6, 1981

In Effect Ninety Days From Passage



**ENROLLED**

**H. B. 987**

(By MR. BRENDA and MR. GILLIAM)

[Passed April 6, 1981; in effect ninety days from passage.]

AN ACT to amend and reenact article nine, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revising the uniform limited partnership act; definitions; name of limited partnership and reservation thereof; specifying office and agent to be maintained by limited partnership; requiring records to be kept and availability thereof; nature of partnership business; business transactions of partner with partnership; execution, amendment, cancellation, filing, notice, and delivery of certificate of limited partnership; liability for false statement in certificate; admission of additional limited partners; voting by limited partners; liability of limited partner to third parties; person erroneously believing himself a limited partner; right of limited partner to information; admission of additional general partners; events of withdrawal of general partners; general powers and liabilities of general partners; contributions by general partner; voting by general partners; liability for contribution; sharing of profits, losses and distributions; interim distributions; withdrawal of general or limited partner; distribution upon withdrawal; distribution in kind; right to distribution; limitations on distribution; liability upon return of contribution; nature of partnership interest; assignment of partnership interest; rights of creditor; right of assignee to become limited partner; power of estate of deceased or incompetent partner; nonjudicial and judicial dissolution; winding up of affairs; distribution of assets; law governing foreign limited partnerships; registration of foreign limited partnerships and names thereof; issuance of registration;

changes and amendments to registration; cancellation of registration; transaction of business without registration; action by the secretary of state to restrain a foreign limited partnership; right of action by limited partner; proper plaintiff; pleading; expenses; construction and application of article; short title of article; effective date of article; and rules for cases not provided for in article.

*Be it enacted by the Legislature of West Virginia:*

That section eighty-two, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article nine, chapter forty-seven of said code be amended and reenacted, all to read as follows:

## **CHAPTER 11. TAXATION.**

### **ARTICLE 12. BUSINESS FRANCHISE REGISTRATION CERTIFICATE TAX.**

#### **§11-12-82. Annual fee of secretary of state as attorney-in-fact.**

1 Every foreign corporation, every foreign limited partnership,  
 2 every domestic corporation whose principal place of business  
 3 or chief works is located without the state, and every domestic  
 4 limited partnership whose principal place of business is located  
 5 without the state, shall pay an annual fee of ten dollars for  
 6 the services of the secretary of state as attorney-in-fact for  
 7 such corporation or limited partnership, which fee shall be due  
 8 and payable at the same time, collected by the same officers,  
 9 and accounted for in the same way, as the annual license tax  
 10 imposed on corporations under this article, payable to the  
 11 secretary of state as statutory attorney-in-fact.

## **CHAPTER 47. REGULATION OF TRADE.**

### **ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.**

#### **§47-9-1. Definitions.**

1 As used in this article, unless the context otherwise requires:

2 (1) "Certificate of limited partnership" means the certificate  
 3 referred to in section eight of this article and the certificate  
 4 as amended;

5 (2) "Contribution" means any cash, property, services

6 rendered, or a promissory note or other binding obligation  
7 to contribute cash or property or to perform services, which  
8 a partner contributes to a limited partnership in his capacity  
9 as a partner;

10 (3) "Event of withdrawal of a general partner" means an  
11 event that causes a person to cease to be a general partner  
12 as provided in section twenty-three of this article;

13 (4) "Foreign limited partnership" means a partnership  
14 formed under the laws of any state other than this state and  
15 having as partners one or more general partners and one or  
16 more limited partners;

17 (5) "General partner" means a person who has been ad-  
18 mitted to a limited partnership as a general partner in accord-  
19 ance with the partnership agreement and named in the certifi-  
20 cate of limited partnership as a general partner;

21 (6) "Limited partner" means a person who has been ad-  
22 mitted to a limited partnership as a limited partner in accord-  
23 ace with the partnership agreement and named in the certi-  
24 ficate of limited partnership as a limited partner;

25 (7) "Limited partnership" and "domestic limited partner-  
26 ship" means a partnership formed by two or more persons  
27 under the laws of this state and having one or more general  
28 partners and one or more limited partners;

29 (8) "Partner" means a limited or general partner;

30 (9) "Partnership agreement" means any valid agreement,  
31 written or oral, of the partners as to the affairs of a limited  
32 partnership and the conduct of its business;

33 (10) "Partnership interest" means a partner's share of the  
34 profits and losses of a limited partnership and the right to re-  
35 ceive distributions of partnership assets;

36 (11) "Person" means a natural person, partnership, limited  
37 partnership (domestic or foreign), trust, estate, association or  
38 corporation; and

39 (12) "State" means a state, territory or possession of the  
40 United States, the District of Columbia or the Commonwealth  
41 of Puerto Rico.

**§47-9-2. Name of limited partnership.**

1 The name of each limited partnership as set forth in its  
2 certificate of limited partnership:

3 (1) Shall contain without abbreviation the words “limited  
4 partnership”;

5 (2) May not contain the name of a limited partner unless  
6 (i) it is also the name of a general partner or the corporate  
7 name of a corporate general partner, or (ii) the business of the  
8 limited partnership had been carried on under the name before  
9 the admission of that limited partner;

10 (3) May not contain any word or phrase indicating or im-  
11 plying that it is organized other than for a purpose stated in  
12 its certificate of limited partnership;

13 (4) May not be the same as, or deceptively similar to the  
14 name of any corporation or limited partnership organized  
15 under the laws of this state or licensed or registered as a  
16 foreign corporation or limited partnership in this state; and

17 (5) May not include the words “engineer,” “engineers,”  
18 “engineering” or any combination of those words unless the  
19 purpose of the corporation is to practice professional engineer-  
20 ing as defined in article thirteen, chapter thirty of this code, as  
21 amended, and one or more of the incorporators is a registered  
22 professional engineer as defined therein.

**§47-9-3. Reservation of name.**

1 (a) The exclusive right to the use of a name may be re-  
2 served by:

3 (1) Any person intending to organize a limited partnership  
4 under this article and to adopt that name;

5 (2) Any domestic limited partnership or any foreign limited  
6 partnership registered in this state which, in either case, intends  
7 to adopt that name;

8 (3) Any foreign limited partnership intending to register  
9 in this state and adopt that name; and

10 (4) Any person intending to organize a foreign limited

11 partnership and intending to have it registered in this state and  
12 adopt that name.

13 (b) The reservation shall be made by filing with the secre-  
14 tary of state an application, executed by the applicant, to  
15 reserve a specified name. If the secretary of state finds that the  
16 name is available for use by a domestic or foreign limited  
17 partnership, he shall reserve that name for the exclusive use  
18 of the applicant for a period of one hundred twenty days. The  
19 right to the exclusive use of a reserved name may be transferred  
20 to any other person by filing in the office of the secretary of  
21 state a notice of the transfer, executed by the applicant for  
22 whom the name was reserved and specifying the name and  
23 address of the transferee.

**§47-9-4. Secretary of state constituted attorney-in-fact for all  
limited partnerships; manner of acceptance or service  
of notice and process upon secretary of state; what  
constitutes conducting affairs or doing or transacting  
business in this state for purposes of this section.**

1 (a) The secretary of state is hereby constituted the attorney-  
2 in-fact for and on behalf of every limited partnership created  
3 by virtue of the laws of this state, with authority to accept  
4 service of notice and process on behalf of every such limited  
5 partnership and upon whom service of notice and process  
6 may be made in this state for and upon every such limited  
7 partnership.

8 No act of such limited partnership appointing the secretary  
9 of state such attorney-in-fact shall be necessary. Immediately  
10 after being served with or accepting any such process or notice,  
11 of which process or notice two copies for each defendant shall  
12 be furnished the secretary of state with the original notice or  
13 process, together with a fee of two dollars, the secretary of  
14 state shall file in his office a copy of such process or notice,  
15 with a note thereon endorsed of the time of service, or accep-  
16 tance, as the case may be, and transmit one copy of such pro-  
17 cess or notice by registered or certified mail, return receipt  
18 requested, to the person to whom notice and process shall be  
19 sent, whose name and address were last furnished to the state  
20 officer at the time authorized by statute to accept service of

21 notice and process and upon whom notice and process may be  
22 served; and if no such person has been named, to the principal  
23 office of the limited partnership at the address last furnished  
24 to the state officer at the time authorized by statute to accept  
25 service of process and upon whom process may be served,  
26 as required by law. No process or notice shall be served on the  
27 secretary of state or accepted by him fewer than ten days  
28 before the return day thereof. Such limited partnership shall  
29 pay the annual fee prescribed by section eighty-two, article  
30 twelve, chapter eleven of this code for the services of the  
31 secretary of state as its attorney-in-fact.

32 (b) Any foreign limited partnership that conducts affairs  
33 or does or transacts business in this state is conclusively  
34 presumed to have appointed the secretary of state as its  
35 attorney-in-fact with authority to accept service of notice  
36 and process on its behalf and upon whom service of notice  
37 and process may be made in this state for and upon every  
38 such limited partnership in any action or proceeding de-  
39 scribed in the next following paragraph of this subsection.  
40 No act of such foreign limited partnership appointing the  
41 secretary of state as its attorney-in-fact shall be necessary. Im-  
42 mediately after being served with or accepting any such pro-  
43 cess or notice, of which process or notice two copies for each  
44 defendant shall be furnished the secretary of state with the  
45 original notice or process, together with a fee of two dollars,  
46 the secretary of state shall file in his office a copy of such  
47 process or notice, with a note thereon endorsed of the time  
48 of service or acceptance, as the case may be, and transmit one  
49 copy of such process or notice by registered or certified mail,  
50 return receipt requested, to such foreign limited partnership  
51 at the address of its principal office, which address shall be  
52 stated in such process or notice. Such service or acceptance of  
53 such process or notice shall be sufficient if such return receipt  
54 is signed by an agent or employee of such foreign limited part-  
55 nership, or the registered or certified mail so sent by the sec-  
56 retary of state is refused by the addressee and the registered or  
57 certified mail is returned to the secretary of state, or to  
58 his office, showing thereon the stamp of the United States  
59 postal service that delivery thereof has been refused, and such  
60 return receipt or registered or certified mail is appended to

61 the original process or notice and filed therewith in the clerk's  
62 office of the court from which such process or notice was  
63 issued. No process or notice may be served on the secretary  
64 of state or accepted by him fewer than ten days before the  
65 return date thereof. The court may order such continuances  
66 as may be reasonable to afford each defendant opportunity  
67 to defend the action or proceedings.

68 For the purpose of this section, a foreign limited partnership  
69 shall be deemed to be conducting affairs or doing or trans-  
70 acting business herein (1) if such foreign limited partnership  
71 makes a contract to be performed, in whole or in part, by any  
72 party thereto, in this state, (2) if such foreign limited partner-  
73 ship commits a tort in whole or in part in this state, or (3) if  
74 such foreign limited partnership manufactures, sells, offers for  
75 sale or supplies any product in a defective condition and such  
76 product causes injury to any person or property within this  
77 state notwithstanding the fact that such foreign limited part-  
78 nership had no agents, servants or employees or contacts  
79 within this state at the time of said injury. The making of such  
80 contract, the committing of such tort or the manufacture or  
81 sale, offer of sale or supply of such defective product as here-  
82 inabove described shall be deemed to be the agreement of such  
83 foreign limited partnership that any notice or process served  
84 upon, or accepted by, the secretary of state pursuant to the  
85 next preceding paragraph of this section in any action or pro-  
86 ceeding against such foreign limited partnership arising from,  
87 or growing out of, such contract, tort, or manufacture or sale,  
88 offer of sale or supply of such defective product shall be of  
89 the same legal force and validity as process duly served on  
90 such a foreign limited partnership in this state.

**§47-9-5. Office to be maintained; records to be kept; availability  
to partners.**

1 (a) Each limited partnership shall continuously maintain  
2 in this state an office, which may but need not be a place of its  
3 business in this state, at which shall be kept the following  
4 records:

5 (1) A current list of the full name and last known business  
6 address of each partner set forth in alphabetical order;



7 (2) A copy of the certificate of limited partnership and  
8 all certificates of amendment thereto, together with executed  
9 copies of any power of attorney pursuant to which any  
10 certificate has been executed;

11 (3) A copy of the limited partnership's federal, state and  
12 local income tax returns and reports, if any, for the three most  
13 recent years; and

14 (4) A copy of any then effective written partnership agree-  
15 ments and of any financial statements of the limited partnership  
16 for the three most recent years.

17 (b) Such records shall be available for inspection and  
18 copying at the reasonable request, and at the expense, of  
19 any partner during ordinary business hours.

**§47-9-6. Nature of business.**

1 A limited partnership may carry on any business which a  
2 partnership without limited partners may carry on, except the  
3 business of banking, brokerage or making insurance.

**§47-9-7. Business transactions of partner with partnership.**

1 Except as provided in the partnership agreement, a partner  
2 may lend money to and transact other business with the limited  
3 partnership and, subject to other applicable law, has the same  
4 rights and obligations with respect thereto as a person who is  
5 not a partner.

**§47-9-8. Certificate of limited partnership.**

1 (a) In order to form a limited partnership, two or more  
2 persons must execute a certificate of limited partnership. The  
3 certificate shall be filed in the office of the secretary of state  
4 and set forth:

5 (1) The name of the limited partnership;

6 (2) The general character of its business;

7 (3) The address of the office and the name and address of  
8 the agent for service of process required to be maintained by  
9 section four of this article;

10 (4) The name and the business address of each partner,  
11 specifying separately the general partners and limited partners;

12 (5) The amount of cash and a description and statement of  
13 the agreed value of the other property or services contributed  
14 by each partner and which each partner has agreed to con-  
15 tribute in the future;

16 (6) The times at which or events on the happening of which  
17 any additional contributions agreed to be made by each part-  
18 ner are to be made;

19 (7) Any power of a limited partner to grant the right to be-  
20 come a limited partner to an assignee of any part of his part-  
21 nership interest, and the terms and conditions of the power;

22 (8) If agreed upon, the time at which or the events on the  
23 happening of which a partner may terminate his membership in  
24 the limited partnership and the amount of, or the method of  
25 determining, the distribution to which he may be entitled re-  
26 specting his partnership interest, and the terms and conditions  
27 of the termination and distribution;

28 (9) Any right of a partner to receive distributions of prop-  
29 erty, including cash from the limited partnership;

30 (10) Any right of a partner to receive, or of a general  
31 partner to make, distributions to a partner which include a  
32 return of all or any part of the partner's contribution;

33 (11) Any time at which or events upon the happening of  
34 which the limited partnership is to be dissolved and its affairs  
35 wound up;

36 (12) Any right of the remaining general partners to con-  
37 tinue the business on the happening of an event of withdrawal  
38 of a general partner; and

39 (13) Any other matters the partners determine to include  
40 therein.

41 (b) A limited partnership is formed at the time of the filing  
42 of the certificate of limited partnership in the office of the  
43 secretary of state or at any later time specified in the certificate  
44 of limited partnership if, in either case, there has been sub-  
45 stantial compliance with the requirements of this section.

**§47-9-9. Amendment to certificate.**

1 (a) A certificate of limited partnership is amended by filing  
2 a certificate of amendment thereto in the office of the secre-  
3 tary of state. The certificate shall set forth:

4 (1) The name of the limited partnership;

5 (2) The date of the filing of the certificate; and

6 (3) The amendment to the certificate.

7 (b) Within thirty days after the happening of any of the  
8 following events, an amendment to a certificate of limited part-  
9 nership reflecting the occurrence of the event or events shall  
10 be filed:

11 (1) A change in the amount or character of the contribution  
12 of any partner, or in any partner's obligation to make a contri-  
13 bution;

14 (2) The admission of a new partner;

15 (3) The withdrawal of a partner; or

16 (4) The continuation of the business under section forty-  
17 four of this article after an event of withdrawal of a general  
18 partner.

19 (c) A general partner who becomes aware that any state-  
20 ment in a certificate of limited partnership was false when  
21 made or that any arrangements or other facts described have  
22 changed, making the certificate inaccurate in any respect, shall  
23 promptly amend the certificate, but an amendment to show  
24 a change of address of a limited partner need be filed only  
25 once every twelve months.

26 (d) A certificate of limited partnership may be amended  
27 at any time for any other proper purpose the general partners  
28 determine.

29 (e) No person has any liability because an amendment to  
30 a certificate of limited partnership has not been filed to reflect  
31 the occurrence of any event referred to in subsection (b) of  
32 this section if the amendment is filed within the thirty-day  
33 period specified in subsection (b).

**§47-9-10. Cancellation of certificate.**

1 A certificate of limited partnership shall be cancelled upon  
2 the dissolution and the commencement of winding up of the  
3 partnership or at any other time there are no limited partners.  
4 A certificate of cancellation shall be filed in the office of the  
5 secretary of state and set forth:

6 (1) The name of the limited partnership;

7 (2) The date of filing of its certificate of limited partner-  
8 ship;

9 (3) The reason for filing the certificate of cancellation;

10 (4) The effective date, which shall be a date certain, of  
11 cancellation if it is not to be effective upon the filing of the  
12 certificate; and

13 (5) Any other information the general partners filing the  
14 certificate determine.

**§47-9-11. Execution of certificates.**

1 (a) Each certificate required by this article to be filed in  
2 the office of the secretary of state shall be executed in the  
3 following manner:

4 (1) An original certificate of limited partnership must  
5 be signed by all partners named therein;

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

10 (3) A certificate of cancellation must be signed by all  
11 general partners;

12 (b) Any person may sign a certificate by an attorney-in-  
13 fact, but a power of attorney to sign a certificate relating to  
14 the admission, or increased contribution, of a partner must  
15 specifically describe the admission or increase.

16 (c) The execution of a certificate by a general partner  
17 constitutes an affirmation under the penalties of perjury that  
18 the facts stated therein are true.

**§47-9-12. Amendment or cancellation by judicial act.**

1 If a person required by section eleven of this article to  
2 execute a certificate of amendment or cancellation fails or  
3 refuses to do so, any other partner, and any assignee of  
4 a partnership interest, who is adversely affected by the  
5 failure or refusal, may petition the appropriate circuit court  
6 to direct the amendment or cancellation. If the court finds  
7 that the amendment or cancellation is proper and that any  
8 person so designated has failed or refused to execute the  
9 certificate, it shall order the secretary of state to record an  
10 appropriate certificate of amendment or cancellation.

**§47-9-13. Filing in office of secretary of state and in the office of clerk of the county commission.**

1 (a) Two signed copies of the certificate of limited partner-  
2 ship and of any certificates of amendment or cancellation, or  
3 of any judicial decree of amendment or cancellation, shall be  
4 delivered to the secretary of state. No photostatic copies may  
5 be used. A person who executes a certificate as an agent or  
6 fiduciary need not exhibit evidence of his authority as a  
7 prerequisite to filing. Unless the secretary of state finds that  
8 any certificate does not conform to law, upon receipt of all  
9 filing fees required by law he shall:

10 (1) Endorse on each duplicate original the word "Filed"  
11 and the day, month and year of the filing thereof;

12 (2) File one duplicate original in his office; and

13 (3) Return the other duplicate original to the person who  
14 filed it or his representative.

15 (b) Upon the filing of a certificate of amendment, or  
16 judicial decree of amendment, in the office of the secretary  
17 of state the certificate of limited partnership shall be amended  
18 as set forth therein, and upon the effective date of a certificate  
19 of cancellation, or a judicial decree thereof, the certificate of  
20 limited partnership is cancelled.

21 (c) The certificate of limited partnership and any certi-  
22 ficates of amendment or cancellation or of any judicial decree  
23 of amendment or cancellation, or a duly certified copy thereof,

24 shall be recorded in the office of the clerk of the county com-  
 25 mission of the county in which such office, as required by  
 26 section five of this article, is located.

**§47-9-14. Liability for false statement in certificate.**

1 If any certificate of limited partnership or certificate of  
 2 amendment or cancellation contains a false statement, one who  
 3 suffers loss by reliance on the statement may recover damages  
 4 for the loss from:

5 (1) Any person who executes the certificate, or causes  
 6 another to execute it on his behalf, and knew, and any  
 7 general partner who knew or should have known, the statement  
 8 to be false at the time the certificate was executed; and

9 (2) Any general partner who thereafter knows or should  
 10 have known that any arrangement or other fact described in  
 11 the certificate has changed, making the statement inaccurate  
 12 in any respect within a sufficient time before the statement  
 13 was relied upon reasonably to have enabled that general  
 14 partner to cancel or amend the certificate, or to file a peti-  
 15 tion for its cancellation or amendment under section twelve of  
 16 this article.

**§47-9-15. Notice.**

1 The fact that a certificate of limited partnership is on  
 2 file in the office of the secretary of state is notice that the  
 3 partnership is a limited partnership and the persons designated  
 4 therein as limited partners are limited partners, but it is not  
 5 notice of any other fact.

**§47-9-16. Delivery of certificates to limited partners.**

1 Upon the return by the secretary of state pursuant to section  
 2 thirteen of this article of a certificate marked "Filed," the  
 3 general partners shall promptly deliver or mail a copy of the  
 4 certificate of limited partnership and each certificate to each  
 5 limited partner unless the partnership agreement provides  
 6 otherwise.

**§47-9-17. Admission of additional limited partners.**

1 (a) After the filing of a limited partnership's original

2 certificate of limited partnership, a person may be admitted  
3 as an additional limited partner:

4 (1) In the case of a person acquiring a partnership in-  
5 terest directly from the limited partnership, upon the com-  
6 pliance with the partnership agreement or, if the partnership  
7 agreement does not so provide, upon the written consent of  
8 all partners; and

9 (2) In the case of an assignee of a partnership interest  
10 of a partner who has the power as provided in section  
11 forty-two of this article to grant the assignee the right to  
12 become a limited partner, upon the exercise of that power  
13 and compliance with any conditions limiting the grant or  
14 exercise of the power.

15 (b) In each case under subsection (a) of this section,  
16 the person acquiring the partnership interest becomes a limited  
17 partner only upon amendment of the certificate of limited  
18 partnership reflecting that fact.

**§47-9-18. Voting by limited partners.**

1 Subject to section nineteen of this article, the partnership  
2 agreement may grant to all or a specified group of the limited  
3 partners the right to vote, on a per capita or other bases,  
4 upon any matter.

**§47-9-19. Liability to third parties.**

1 (a) Except as provided in subsection (d) of this section,  
2 a limited partner is not liable for the obligations of a limited  
3 partnership unless he is also a general partner or, in addition  
4 to the exercise of his rights and powers as a limited partner,  
5 he takes part in the control of the business: *Provided*, That if  
6 the limited partner's participation in the control of the business  
7 is not substantially the same as the exercise of the powers  
8 of a general partner, he is liable only to persons who transact  
9 business with the limited partnership with actual knowledge  
10 of his participation in control.

11 (b) A limited partner does not participate in the control  
12 of the business within the meaning of subsection (a) of this  
13 section solely by doing one or more of the following:

14 (1) Being a contractor for or an agent or employee of the  
15 limited partnership or of a general partner;

16 (2) Consulting with and advising a general partner with  
17 respect to the business of the limited partnership;

18 (3) Acting as surety for the limited partnership;

19 (4) Approving or disapproving an amendment to the part-  
20 nership agreement; or

21 (5) Voting on one or more of the following matters:

22 (i) The dissolution and winding up of the limited partner-  
23 ship;

24 (ii) The sale, exchange, lease, mortgage, pledge or other  
25 transfer of all or substantially all of the assets of the limited  
26 partnership other than in the ordinary course of its business;

27 (iii) The incurrence of indebtedness by the limited partner-  
28 ship other than in the ordinary course of its business;

29 (iv) A change in the nature of the business; or

30 (v) The removal of a general partner.

31 (c) The enumeration in subsection (b) of this section does  
32 not mean that the possession or exercise of any other powers  
33 by a limited partner constitutes participation by him in the  
34 business of the limited partnership.

35 (d) A limited partner who knowingly permits his name to  
36 be used in the name of the limited partnership, except under  
37 circumstances permitted by subdivision two, section two of  
38 this article, is liable to creditors who extend credit to the  
39 limited partnership without actual knowledge that the limited  
40 partner is not a general partner.

**§47-9-20. Person erroneously believing himself limited partner.**

1 (a) Except as provided in subsection (b) of this section,  
2 a person who makes a contribution to a business enterprise  
3 and erroneously but in good faith believes that he has become  
4 a limited partner in the enterprise is not a general partner  
5 in the enterprise and is not bound by its obligations by reason  
6 of making the contribution, receiving distributions from the



7 enterprise, or exercising any rights of a limited partner, if,  
8 on ascertaining the mistake, he:

9 (1) Causes an appropriate certificate of limited partnership  
10 or a certificate of amendment to be executed and filed; or

11 (2) Withdraws from future equity participation in the enter-  
12 prise.

13 (b) A person who makes a contribution of the kind de-  
14 scribed in subsection (a) of this section, is liable as a general  
15 partner to any third party who transacts business with the  
16 enterprise (i) before the person withdraws and an appropriate  
17 certificate is filed to show withdrawal, or (ii) before an appro-  
18 priate certificate is filed to show his status as a limited partner  
19 and, in the case of an amendment, after expiration of the  
20 thirty day period for filing an amendment relating to the person  
21 as a limited partner under section nine of this article, but in  
22 either case only if the third party actually believed in good  
23 faith that the person was a general partner at the time of the  
24 transaction.

**§47-9-21. Right of limited partner to information.**

1 Each limited partner has the right to:

2 (1) Inspect and copy any of the partnership records re-  
3 quired to be maintained by section five of this article;

4 (2) Obtain from the general partners from time to time  
5 upon reasonable demand (i) true and full information re-  
6 garding the state of the business and financial condition of the  
7 limited partnership, (ii) promptly after becoming available,  
8 a copy of the limited partnership's federal, state and local in-  
9 come tax returns from each year, and (iii) other information  
10 regarding the affairs of the limited partnership as is just and  
11 reasonable.

**§47-9-22. Admission of additional general partners.**

1 After the filing of a limited partnership's original certificate  
2 of limited partnership, additional general partners may be ad-  
3 mitted only with the specific written consent of each partner.

**§47-9-23. Events of withdrawal of general partner.**

1 Except as approved by the specific written consent of all  
2 partners at the time, a person ceases to be a general partner  
3 of a limited partnership upon the happening of any of the  
4 following events:

5 (1) The general partner withdraws from the limited part-  
6 nership as provided in section thirty-two of this article;

7 (2) The general partner ceases to be a member of the limit-  
8 ed partnership as provided in section forty of this article;

9 (3) The general partner is removed as a general partner in  
10 accordance with the partnership agreement;

11 (4) Unless otherwise provided for in the certificate of limited  
12 partnership, the general partner (i) makes an assignment for  
13 the benefit of creditors; (ii) files a voluntary petition in bank-  
14 ruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files  
15 a petition or answer seeking for himself any reorganization,  
16 arrangement, composition, readjustment, liquidation, dissolu-  
17 tion or similar relief under any statute, law or regulation;  
18 (v) files an answer of other pleading admitting to failing to  
19 contest the material allegations of a petition filed against  
20 him in any proceeding of this nature; or (vi) seeks, consents  
21 to, or acquiesces in the appointment of a trustee, receiver or  
22 liquidator of the general partner or of all or any substantial  
23 part of his properties;

24 (5) Unless otherwise provided in the certificate of limited  
25 partnership, one hundred twenty days after the commence-  
26 ment of any proceeding against the general partner seeking re-  
27 organization, arrangement, composition, readjustment, liqui-  
28 dation, dissolution or similar relief under any statute, law or  
29 regulation, the proceeding has not been dismissed, or if with-  
30 in ninety days after the appointment without his consent or  
31 acquiescence of a trustee, receiver or liquidator of the general  
32 partner or of all or any substantial part of his properties, the  
33 appointment is not vacated or stayed or within ninety days  
34 after the expiration of any such stay, the appointment is not  
35 vacated;

36 (6) In the case of a general partner who is a natural per-

37 son, (i) his death; or (ii) the entry by a court of competent  
38 jurisdiction adjudicating him incompetent to manage his per-  
39 son or his estate;

40 (7) In the case of a general partner who is acting as a  
41 general partner by virtue of being a trustee of a trust, the  
42 termination of the trust, but not merely the substitution of a  
43 new trustee;

44 (8) In the case of a general partner that is a separate part-  
45 nership, the dissolution and commencement of winding up of  
46 the separate partnership;

47 (9) In the case of a general partner that is a corporation,  
48 the filing of a certificate of dissolution, or its equivalent, for  
49 the corporation or the revocation of its charter; or

50 (10) In the case of an estate, the distribution by the fidu-  
51 ciary of the estate's entire interest in the partnership.

**§47-9-24. General powers and liabilities of general partner.**

1 Except as provided in this article or in the partnership agree-  
2 ment, a general partner of a limited partnership has the rights  
3 and powers and is subject to the restrictions and liabilities of  
4 a partner in a partnership without limited partners.

**§47-9-25. Contributions by general partner.**

1 Except as provided in this article or in the partnership agree-  
2 ments to the partnership and share in the profits and losses  
3 of and in distributions from the limited partnership as a gen-  
4 eral partner. A general partner also may make contributions  
5 to and share in profits, losses and distributions as a limited  
6 partner. A person who is both a general partner and a limited  
7 partner has the rights and powers and is subject to the restric-  
8 tions and liabilities of a general partner and, except as pro-  
9 vided in the partnership agreement, also has the powers and is  
10 subject to the restrictions of a limited partner to the extent of  
11 his participation in the partnership as a limited partner.

**§47-9-26. Voting by general partners.**

1 The partnership agreement may grant to all or certain  
2 identified general partners the right to vote, on a per capita

3 or any other basis, separately or with all or any class of the  
4 limited partners on any matter.

**§47-9-27. Form of contribution.**

1 The contribution of a partner may be in cash, property,  
2 or services rendered, or a promissory note or other obligation  
3 to contribute cash or property or to perform services.

**§47-9-28. Liability for contribution.**

1 (a) Except as provided in the certificate of limited partner-  
2 ship, a partner is obligated to the limited partnership to  
3 perform any promise to contribute cash or property or to  
4 perform services, even if he is unable to perform because of  
5 death, disability or any other reason. If a partner does not  
6 make the required contribution of property or services, he is  
7 obligated at the option of the limited partnership to contribute  
8 cash equal to the portion of the value, as stated in the certificate  
9 of limited partnership, of the stated contribution that has not  
10 been made.

11 (b) Unless otherwise provided in the partnership agreement,  
12 the obligation of a partner to make a contribution or return  
13 money or other property paid or distributed in violation of  
14 this article may be compromised only by consent of all the  
15 partners. Notwithstanding the compromise, a creditor of a  
16 limited partnership who extends credit or whose claim arises  
17 after the filing of the certificate of limited partnership or an  
18 amendment thereto which, in either case, reflects the obliga-  
19 tion, and before the amendment or cancellation thereof to  
20 reflect the compromise, may enforce the original obligation.

**§47-9-29. Sharing of profits and losses.**

1 The profits and losses of a limited partnership shall be  
2 allocated among the partners, and among classes of partners,  
3 in the manner provided in the partnership agreement. If the  
4 partnership agreement does not so provide, profits and  
5 losses shall be allocated on the basis of the value, as stated  
6 in the certificate of limited partnership, of the contributions  
7 made by each partner to the extent they have been received  
8 by the partnership and have not been returned.

**§47-9-30. Sharing of distributions.**

1 Distributions of cash or other assets of a limited partner-  
2 ship shall be allocated among the partners and classes of  
3 partners in the manner provided in the partnership agreement.  
4 If the partnership agreement does not so provide, distributions  
5 shall be made on the basis of the value, as stated in the cer-  
6 tificate of limited partnership, of the contributions made by  
7 each partner to the extent they have been received by the  
8 partnership and have not been returned.

**§47-9-31. Interim distributions.**

1 Except as provided in this article, a partner is entitled  
2 to receive distributions from a limited partnership before his  
3 withdrawal from the limited partnership and before the  
4 dissolution and winding up thereof:

5 (1) To the extent and at the times or upon the happening  
6 of the events specified in the partnership agreement; and

7 (2) If any distribution constitutes a return of part of his  
8 contribution under subsection (b), section thirty-eight of this  
9 article, to the extent and at the times or upon the happening  
10 of the events specified in the certificate of limited partnership.

**§47-9-32. Withdrawal of general partner.**

1 A general partner may withdraw from a limited partnership  
2 at any time by giving written notice to the other partners, but  
3 if the withdrawal violates the partnership agreement, the  
4 limited partnership may recover from the withdrawing general  
5 partner damages for breach of the partnership agreement and  
6 offset the damages against the amount otherwise distributable  
7 to him.

**§47-9-33. Withdrawal of limited partner.**

1 A limited partner may withdraw from a limited partnership  
2 at any time or upon the happening of events specified in the  
3 certificate of limited partnership and in accordance with the  
4 partnership agreement. If the certificate does not specify  
5 the time or the events upon the happening of which a limited  
6 partner may withdraw or a definite time for the dissolution  
7 and winding up of the limited partnership, a limited partner

8 may withdraw upon not less than six months' prior written  
9 notice to each general partner at his address on the books  
10 of the limited partnership at its office in this state.

**§47-9-34. Distribution upon withdrawal.**

1 Except as provided in this article, upon withdrawal any  
2 withdrawing partner is entitled to receive any distribution to  
3 which he is entitled under the partnership agreement, and, if  
4 not otherwise provided in the agreement, he is entitled to re-  
5 ceive within a reasonable time after withdrawal the fair value  
6 of his interest in the limited partnership as of the date of  
7 withdrawal based upon his right to share in distributions from  
8 the limited partnership.

**§47-9-35. Distribution in kind.**

1 Except as provided in the certificate of limited partnership,  
2 a partner, regardless of the nature of his contribution, has  
3 no right to demand and receive any distribution from a limited  
4 partnership in any form other than cash. Except as provided  
5 in the partnership agreement, a partner may not be compelled  
6 to accept a distribution of any asset in kind from a limited  
7 partnership to the extent that the percentage of the asset  
8 distributed to him exceeds a percentage of that asset which  
9 is equal to the percentage in which he shares in distributions  
10 from the limited partnership.

**§47-9-36. Right to distribution.**

1 At the time a partner becomes entitled to receive a distribu-  
2 tion, he has the status of, and is entitled to all remedies  
3 available to, a creditor of the limited partnership with respect  
4 to the distribution.

**§47-9-37. Limitations on distribution.**

1 A partner may not receive a distribution from a limited  
2 partnership to the extent that, after giving effect to the  
3 distribution, all liabilities of the limited partnership, other  
4 than liabilities to partners on account of their partnership  
5 interests, exceed the fair value of the partnership assets.

**§47-9-38. Liability upon return of contribution.**

1 (a) If a partner has received the return of any part of his

2 contribution without violation of the partnership agreement  
3 or this article, he is liable to the limited partnership for a  
4 period of one year thereafter for the amount of the returned  
5 contribution, but only to the extent necessary to discharge the  
6 limited partnership's liabilities to creditors who extended  
7 credit to the limited partnership during the period the con-  
8 tribution was held by the partnership.

9 (b) If a partner has received the return of any part of his  
10 contribution in violation of the partnership agreement or this  
11 article, he is liable to the limited partnership for a period of  
12 six years thereafter for the amount of the contribution wrong-  
13 fully returned.

14 (c) A partner receives a return of his contribution to the  
15 extent that a distribution to him reduces his share of the fair  
16 value of the net assets of the limited partnership below the  
17 value, as set forth in the certificate of limited partnership, of  
18 his contribution which has not been distributed to him.

**§47-9-39. Nature of partnership interest.**

1 A partnership interest is personal property.

**§47-9-40. Assignment of partnership interest.**

1 Except as provided in the partnership agreement, a part-  
2 nership interest is assignable in whole or in part. An assign-  
3 ment of a partnership interest does not dissolve a limited part-  
4 nership or entitle the assignee to become or to exercise any  
5 rights of a partner. An assignment entitles the assignee to re-  
6 ceive, to the extent assigned, only the distribution to which the  
7 assignor would be entitled. Except as provided in the partner-  
8 ship agreement, a partner ceases to be a partner upon assign-  
9 ment of all his partnership interest.

**§47-9-41. Rights of creditor.**

1 On application to a court of competent jurisdiction by any  
2 judgment creditor of a partner, the court may charge the  
3 partnership interest of the partner with payment of the unsat-  
4 isfied amount of the judgment with interest. To the extent so  
5 charged, the judgment creditor has only the rights of an as-  
6 signee of the partnership interest. This article does not deprive

7 any partner of the benefit of any exemption laws applicable  
8 to his partnership interest.

**§47-9-42. Right of assignee to become limited partner.**

1 (a) An assignee of a partnership interest, including an as-  
2 signee of a general partner, may become a limited partner if  
3 and to the extent that (1) the assignor gives the assignee that  
4 right in accordance with authority described in the certificate  
5 of limited partnership, or (2) all other partners consent.

6 (b) An assignee who has become a limited partner has, to  
7 the extent assigned, the rights and powers and is subject to the  
8 restrictions and liabilities of a limited partner under the part-  
9 nership agreement and this article. An assignee who becomes  
10 a limited partner also is liable for the obligations of his assignor  
11 to make and return contributions as provided in section thirty-  
12 eight of this article: *Provided*, That the assignee is not obli-  
13 gated for liabilities unknown to the assignee at the time he be-  
14 came a limited partner and which could not be ascertained  
15 from the certificate of limited partnership.

16 (c) If an assignee of a partnership interest becomes a limit-  
17 ed partner, the assignor is not released from his liability to the  
18 limited partnership under sections fourteen and twenty-eight  
19 of this article.

**§47-9-43. Power of estate of deceased or incompetent partner.**

1 If a partner who is an individual dies or a court of com-  
2 petent jurisdiction adjudges him to be incompetent to manage  
3 his person or his property, the partner's executor, administra-  
4 tor, guardian, conservator, or other legal representative may  
5 exercise all the partner's rights for the purpose of settling  
6 his estate or administering his property, including any power  
7 the partner had to give an assignee the right to become a  
8 limited partner. If a partner is a corporation, trust, or other  
9 entity and is dissolved or terminated, the powers of that part-  
10 ner may be exercised by its legal representative or successor.

**§47-9-44. Nonjudicial dissolution.**

1 A limited partnership is dissolved and its affairs shall be  
2 wound up upon the happening of the first to occur of the fol-  
3 lowing:



4 (1) At the time or upon the happening of events specified  
5 in the certificate of limited partnership;

6 (2) The written consent of all partners;

7 (3) An event of withdrawal of a general partner, unless  
8 at the time there is at least one other general partner and the  
9 certificate of limited partnership permits the business of the  
10 limited partnership to be carried on by the remaining general  
11 partner and that partner does so, but the limited partnership  
12 is not dissolved and is not required to be wound up by reason  
13 of any event of withdrawal if, within ninety days after the  
14 withdrawal, all partners agree in writing to continue the busi-  
15 ness of the limited partnership and to the appointment of one  
16 more additional general partners if necessary or desired; or

17 (4) Entry of a decree of judicial dissolution under section  
18 forty-five of this article.

**§47-9-45. Judicial dissolution.**

1 On application by or for a partner, the appropriate circuit  
2 court may decree dissolution of a limited partnership when-  
3 ever it is not reasonably practicable to carry on the business  
4 in conformity with the partnership agreement.

**§47-9-46. Winding up of affairs.**

1 Except as provided in the partnership agreement, the general  
2 partners who have not wrongfully dissolved a limited partner-  
3 ship or, if none, the limited partners, may wind up the limited  
4 partnership's affairs: *Provided*, That the appropriate circuit  
5 court may wind up the limited partnership's affairs upon  
6 application of any partner, his legal representative or assignee.

**§47-9-47. Distribution of assets.**

1 Upon the winding up of a limited partnership, the assets  
2 shall be distributed as follows:

3 (1) To creditors, including partners who are creditors, to  
4 the extent permitted by law, in satisfaction of liabilities of  
5 the limited partnership other than liabilities for distributions  
6 to partners under section thirty-one or thirty-four of this  
7 article;

8 (2) Except as provided in the partnership agreement, to  
9 partners and former partners in satisfaction of liabilities  
10 for distributions under said section thirty-one or thirty-four;  
11 and

12 (3) Except as provided in the partnership agreement, to  
13 partners first for the return of their contributions and secondly  
14 respecting their partnership interests, in the proportions in  
15 which the partners share in distributions.

**§47-9-48. Law governing foreign limited partnerships.**

1 Subject to the Constitution of this state, (1) the laws of  
2 the state under which a foreign limited partnership is organized  
3 govern its organization and internal affairs and the liability of  
4 its limited partners, and (2) a foreign limited partnership may  
5 not be denied registration by reason of any difference between  
6 those laws and the laws of this state.

**§47-9-49. Registration of foreign limited partnership.**

1 Before transacting business in this state, a foreign limited  
2 partnership shall register with the secretary of state. In order  
3 to register, a foreign limited partnership shall submit to the  
4 secretary of state, in duplicate, an application for registration  
5 as a foreign limited partnership, signed and sworn to by a  
6 general partner and setting forth:

7 (1) The name of the foreign limited partnership and, if  
8 different, the name under which it proposes to register and  
9 transact business in this state;

10 (2) The state and date of its formation;

11 (3) The general character of the business it proposes to  
12 transact in this state;

13 (4) The name and address of any agent for service of  
14 process on the foreign limited partnership whom the foreign  
15 limited partnership elects to appoint: *Provided*, That the  
16 agent must be an individual resident of this state, a domestic  
17 corporation, or a foreign corporation having a place of business  
18 in and authorized to do business in this state;

19 (5) A statement that the secretary of state is appointed

20 the agent of the foreign limited partnership for service of  
21 process if no agent has been appointed under subdivision (4)  
22 of this section or, if appointed, the agent's authority has been  
23 revoked or if the agent cannot be found or served with the  
24 exercise of reasonable diligence;

25 (6) The address of the office required to be maintained  
26 in the state of its organization by the laws of that state or,  
27 if not so required, of the principal office of the foreign  
28 limited partnership; and

29 (7) If the certificate of limited partnership filed in the  
30 foreign limited partnership's state of organization is not re-  
31 quired to include the names and business addresses of the  
32 partners, a list of such names and addresses.

**§47-9-50. Issuance of registration; filing in the office of the clerk  
of the county commission.**

1 (a) If the secretary of state finds that an application for  
2 registration conforms to law and all requisite fees have been  
3 paid, he shall:

4 (1) Endorse on the application the word "filed", and the  
5 month, day and year of the filing thereof;

6 (2) File in his office a duplicate original of the application;  
7 and

8 (3) Issue a certificate of registration to transact business in  
9 this state..

10 (b) The certificate of registration, together with a duplicate  
11 original of the application, shall be returned to the person who  
12 filed the application or his representative.

13 (c) The certificate of registration, or a duly certified copy  
14 thereof, shall be recorded in the office of the clerk of the county  
15 commission of the county where the principal office of the  
16 limited partnership in this state is located. If such limited  
17 partnership does not maintain a principal office in this state,  
18 the recordation may be completed in any county in which the  
19 limited partnership is conducting its affairs or doing or trans-  
20 acting business.

**§47-9-51. Registration of name of foreign limited partnership.**

1 A foreign limited partnership may register with the secretary  
2 of state under any name, whether or not it is the name under  
3 which it is registered in its state of organization, that includes  
4 without abbreviation the words "limited partnership" and that  
5 could be registered by a domestic limited partnership.

**§47-9-52. Changes and amendments to registration.**

1 If any statement in the application for registration of a  
2 foreign limited partnership was false when made or any ar-  
3 rangements or other facts described have changed, making the  
4 application inaccurate in any respect, the foreign limited part-  
5 nership shall promptly file in the office of the secretary of  
6 state a certificate, signed and sworn to by a general partner,  
7 correcting such statement.

**§47-9-53. Cancellation of registration.**

1 A foreign limited partnership may cancel its registration by  
2 filing with the secretary of state a certificate of cancellation  
3 signed and sworn to by a general partner. A cancellation does  
4 not terminate the authority of the secretary of state to accept  
5 service of process on the foreign limited partnership with re-  
6 spect to claims for relief or causes of action arising out of the  
7 transaction of business in this state.

**§47-9-54. Transaction of business without registration.**

1 (a) A foreign limited partnership transacting business in  
2 this state may not maintain any action, suit, or proceeding in  
3 any court of this state until it has registered in this state.

4 (b) The failure of a foreign limited partnership to register  
5 in the state does not impair the validity of any contract or act  
6 of the foreign limited partnership or prevent the foreign limited  
7 partnership from defending any action, suit, or proceeding in  
8 any court of this state.

9 (c) A limited partner of a foreign limited partnership is not  
10 liable as a general partner of the foreign limited partnership  
11 solely by reason of having transacted business in this state  
12 without registration.

13 (d) A foreign limited partnership, by transacting business  
14 in the state without registration, appoints the secretary of  
15 state as its agent for service of process with respect to claim  
16 for relief or cause of action arising out of the transaction or  
17 business in this state.

**§47-9-55. Action by attorney general to restrain a foreign limited partnership.**

1 The attorney general may bring an action to restrain a  
2 foreign limited partnership from transacting business in this  
3 state in violation of this article.

**§47-9-56. Right of action by limited partner.**

1 A limited partner may bring an action in the right of a  
2 limited partnership to recover a judgment in its favor if general  
3 partners with authority to do so have refused to bring the  
4 action or if an effort to cause those general partners to bring  
5 the action is not likely to succeed.

**§47-9-57. Proper plaintiff.**

1 In a derivative action, the plaintiff must be a partner at the  
2 time of bringing the action and (1) at the time of the trans-  
3 action of which he complains or (2) his status as a partner  
4 had devolved upon him by operation of law or pursuant to the  
5 terms of the partnership agreement from a person who was a  
6 partner at the time of the transaction.

**§47-9-58. Pleading.**

1 In a derivative action, the complaint shall set forth with  
2 particularity the effort of the plaintiff to secure initiation of the  
3 action by a general partner or the reasons for not making the  
4 effort.

**§47-9-59. Expenses.**

1 If a derivative action is successful in whole or in part or if  
2 anything is received by the plaintiff as a result of a judgment,  
3 compromise or settlement of an action or claim, the court may  
4 award the plaintiff reasonable expenses, including reasonable  
5 attorney's fees, and shall direct him to remit to the limited  
6 partnership the remainder of those proceeds received by him.

**§47-9-60. Construction and application of article.**

1 This article shall be applied and construed to effectuate  
2 its general purpose to make uniform the law with respect to  
3 the subject of this article among states enacting the same.

**§47-9-61. Short title of article.**

1 This article may be cited as the "Uniform Limited Part-  
2 nership Act."

**§47-9-62. Effective date of article.**

1 The provisions of this article become effective on the first  
2 day of January, one thousand nine hundred eighty-two.

**§47-9-63. Rules for cases not provided for in article.**

1 In any case not provided for in this article, the provisions  
2 of the uniform partnership act, article eight-a of this chapter,  
3 shall apply.

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

*L. P. Baylor*  
Chairman Senate Committee

*Tony G. Whitlow*  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

*Judd C. Willis*  
Clerk of the Senate

*VA Blankenship*  
Clerk of the House of Delegates  
*Warren P. Wilson*  
President of the Senate

*Hyde H. See, Jr.*  
Speaker House of Delegates

The within is approved this the 20  
day of April, 1981.

*John R. Rhyne*  
Governor

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SECY. OF STATE