WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

ENROLLED

SENATE BILL NO. 103

(By Senator Sharpe, et al.)

PASSED February 12, 1986
In Effect July 1, 1986
ENROLLED
Senate Bill No. 103
(By Senators Sharpe, Cook, Palumbo, Colombo, Fanning, Burdette and Shaw)

[Passed February 12, 1986; to take effect July 1, 1986]

AN ACT to amend and reenact sections one, two, three, five, eight, nine, eleven, twelve, thirteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-two, twenty-three, twenty-eight, twenty-nine, thirty, thirty-one, thirty-three, thirty-five, thirty-eight, forty-two, forty-four, forty-nine, fifty and sixty-two, article nine, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all 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; formation and nature of partnership business; execution, amendment, cancellation, filing, notice and delivery of certificate of limited partnership; liability for false statement in certificate; admission of limited partners; voting by limited partners; liability of limited partner to third parties; person erroneously believing himself a limited partner; admission of additional general partners; events of withdrawal of general partners; liability for contribution; sharing of profits, losses and distributions; interim distributions; withdrawal of general or limited partner; distribution in
kind; liability upon return of contribution; right of assignee
to become limited partner; nonjudicial and judicial
dissolution; registration of foreign limited partnerships and
names thereof; issuance of registration; changes and
amendments to registration; and effective date of article.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, five, eight, nine, eleven, twelve,
thirteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-
two, twenty-three, twenty-eight, twenty-nine, thirty, thirty-one,
seventy-three, thirty-five, thirty-eight, forty-two, forty-four,
forty-nine, fifty and sixty-two, all of article nine, chapter forty-
seven of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be amended and reenacted, all to read as
follows:

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-1. Definitions.

1 As used in this article, unless the context otherwise
2 requires:
3 (1) "Certificate of limited partnership" means the
4 certificate referred to in section eight of this article and the
5 certificate as amended;
6 (2) "Contribution" means any cash, property, services
7 rendered, or a promissory note or other binding obligation
8 to contribute cash or property or to perform services, which
9 a partner contributes to a limited partnership in his
10 capacity as a partner;
11 (3) "Event of withdrawal of a general partner" means
12 an event that causes a person to cease to be a general partner
13 as provided in section twenty-three of this article;
14 (4) "Foreign limited partnership" means a partnership
15 formed under the laws of any state other than this state and
16 having as partners one or more general partners and one or
17 more limited partners;
18 (5) "General partner" means a person who has been
19 admitted to a limited partnership as a general partner in
20 accordance with the partnership agreement and named in
21 the certificate of limited partnership as a general partner;
22 (6) "Limited partner" means a person who has been
23 admitted to a limited partnership as a limited partner in
24 accordance with the partnership agreement;
§47-9-2. Name of limited partnership.

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

(1) Shall contain without abbreviation the words "limited partnership";
(2) May not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership had been carried on under the name before the admission of that limited partner;
(3) May not be the same as, or deceptively similar to the name of any corporation or limited partnership organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state; and
(4) May not include the words "engineer," "engineers," "engineering" or any combination of those words unless the purpose of the corporation is to practice professional engineering as defined in article thirteen, chapter thirty of this code, as amended, and one or more of the incorporators is a registered professional engineer as defined therein.

§47-9-3. Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:
(1) Any person intending to organize a limited partnership under this article and to adopt that name;
(2) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;
(3) Any foreign limited partnership intending to register in this state and adopt that name; and
(4) Any person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.

(b) The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve that name for the exclusive use of the applicant for a period of one hundred twenty days. Once the applicant reserves a name he may not reserve the same name again until more than sixty days after the expiration of the one hundred twenty day period for which the name was last reserved. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

§47-9-5. Office and records.

(a) Each limited partnership shall continuously maintain in this state an office, which may, but need not be, a place of its business in this state, at which shall be kept the following records:
(1) A current list of the full name and last known business address of each partner, separately identifying the general and the limited partners, set forth in alphabetical order;
(2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any power of attorney pursuant to which any certificate has been executed;
(3) A copy of the limited partnership's federal, state and local income tax returns and reports, if any, for the three most recent years;
(4) A copy of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years; and

(5) Unless contained in a written partnership agreement, a writing setting out:

(A) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

(B) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

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

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

Such records shall be available for inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.


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

(1) The name of the limited partnership;

(2) The general character of its business;

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

(4) The name and the business address of each general partner; and

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

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.
§47-9-9. Amendment to certificate.

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate shall set forth:

(1) The name of the limited partnership;

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

(3) The amendment to the certificate.

(b) Within thirty days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

(1) The admission of a new partner;

(2) The withdrawal of a partner; or

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

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

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

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

(f) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.


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

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner; and
§47-9-12. Judicial amendment or cancellation of certificate.

If a person required by section eleven of this article to execute a certificate of amendment or cancellation fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the appropriate circuit court to direct the execution of the certificate. If the court finds that the amendment or cancellation is proper and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate of amendment or cancellation.


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

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

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

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

(b) Upon the filing of a certificate of amendment, or judicial decree of amendment, in the office of the secretary of state the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of
a certificate of cancellation, or a judicial decree thereof, the
certificate of limited partnership is canceled.
(c) The certificate of limited partnership and any
certificates of amendment or cancellation or of any judicial
decree of amendment or cancellation, or a duly certified
copy thereof, shall be recorded in the office of the clerk of
the county commission of the county in which such office, as
required by section five of this article, is located.
This filing, or failure to file, shall in no way affect the
formation of the limited partnership. Only the filing in the
office of the secretary of state, required by section eight of
this article, shall determine the validity of the limited
partnership.

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

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

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

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

(a) A person becomes a limited partner on the later of:
(1) The date the original certificate of limited
partnership is filed; or
(2) The date stated in the records of the limited
partnership as the date that person becomes a limited
partner.
(b) After the filing of a limited partnership's original
certificate of limited partnership, a person may be admitted
as an additional limited partner:
(1) In the case of a person acquiring a partnership
interest directly from the limited partnership, upon the
compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

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


(a) Except as provided in subsection (d) of this section, a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business: Provided, That if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

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

(1) Being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director or shareholder of a general partner that is a corporation;

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

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

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

(5) Requesting or attending a meeting of partners;

(6) Proposing, approving or disapproving, by voting or otherwise on one or more of the following matters:

(i) The dissolution and winding up of the limited partnership;

(ii) The sale, exchange, lease, mortgage, pledge or other
transfer of all or substantially all of the assets of the limited partnership;

(iii) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

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

(v) The admission or removal of a general partner;

(vi) The admission or removal of a limited partner;

(vii) A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(viii) An amendment to the partnership agreement or certificate of limited partnership; or

(ix) Matters related to the business of the limited partnership not otherwise enumerated in this subsection (b), which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

(7) Winding up the limited partnership pursuant to section forty-six of this article; or

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

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

(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by subdivision (2), section two of this article, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

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

(a) Except as provided in subsection (b) of this section, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving
distributions from the enterprise, or exercising any rights of
a limited partner, if, on ascertaining the mistake, he:
(1) Causes an appropriate certificate of limited
partnership or a certificate of amendment to be executed
and filed; or
(2) Withdraws from future equity participation in the
enterprise by executing and filing in the office of the
secretary of state a certificate declaring withdrawal under
this section.
(b) A person who makes a contribution of the kind
described in subsection (a) of this section, is liable as a
general partner to any third party who transacts business
with the enterprise (i) before the person withdraws and an
appropriate certificate is filed to show withdrawal, or (ii)
before an appropriate certificate is filed to show that he is
not a general partner, but in either case only if the third
party actually believed in good faith that the person was a
general partner at the time of the transaction.
§47-9-22. Admission of additional general partners.
After the filing of a limited partnership's original
certificate of limited partnership, additional general
partners may be admitted as provided in writing in the
partnership agreement or, if the partnership agreement
does not provide in writing for the admissions of additional
general partners, with the written consent of all partners.
§47-9-23. Events of withdrawal of general partner.
Except as approved by the specific written consent of all
partners at the time, a person ceases to be a general partner
of a limited partnership upon the happening of any of the
following events:
(1) The general partner withdraws from the limited
partnership as provided in section thirty-two of this article;
(2) The general partner ceases to be a member of the
limited partnership as provided in section forty of this
article;
(3) The general partner is removed as a general partner
in accordance with the partnership agreement;
(4) Unless otherwise provided for in writing in the
partnership agreement, the general partner (i) makes an
assignment for the benefit of creditors: (ii) files a voluntary
petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties;

(5) Unless otherwise provided in writing in the partnership agreement, one hundred twenty days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety days after the expiration of any such stay, the appointment is not vacated;

(6) In the case of a general partner who is a natural person, (i) his death; or (ii) the entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

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

(8) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

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

(10) In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.


(a) No promise by a limited partner to contribute to the
limited partnership is enforceable unless set out in a writing signed by the limited partner.

(b) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to the portion of the value, as stated in the partnership records required to be kept by section five of this article of the stated contribution that has not been made.

(c) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this article may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

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

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the partnership records required to be kept by section five of this article, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.


Distributions of cash or other assets of a limited partnership shall be allocated among the partners and classes of partners in the manner provided in the partnership agreement. If the partnership agreement does
not so provide, distributions shall be made on the basis of
the value, as stated in the partnership records required to be
kept by section five of this article, of the contributions made
by each partner to the extent they have been received by the
partnership and have not been returned.

§47-9-31. Interim distributions.
1 Except as provided in this article, a partner is entitled to
2 receive distributions from a limited partnership before his
3 withdrawal from the limited partnership and before the
dissolution and winding up thereof to the extent and at the
times or upon the happening of the events specified in the
partnership agreement.

§47-9-33. Withdrawal of limited partner.
1 A limited partner may withdraw from a limited
2 partnership at the time or upon the happening of events
3 specified in writing in the partnership agreement. If the
4 agreement does not specify in writing the time or the events
5 upon the happening of which a limited partner may
6 withdraw or a definite time for the dissolution and winding
7 up of the limited partnership, a limited partner may
8 withdraw upon not less than six months' prior written
9 notice to each general partner at his address on the books of
10 the limited partnership at its office in this state.

§47-9-35. Distribution in kind.
1 Except as provided in writing in the partnership
2 agreement, a partner, regardless of the nature of his
3 contribution, has no right to demand and receive any
4 distribution from a limited partnership in any form other
5 than cash. Except as provided in writing in the partnership
6 agreement, a partner may not be compelled to accept a
7 distribution of any asset in kind from a limited partnership
8 to the extent that the percentage of the asset distributed to
9 him exceeds a percentage of that asset which is equal to the
10 percentage in which he shares in distributions from the
11 limited partnership.

§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 or this article, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

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

(c) A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value, as set forth in the records required to be kept by section five of this article, of his contribution which has not been distributed to him.

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

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

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this article. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in section thirty-eight of this article: Provided, That the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner.

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

§47-9-44. Nonjudicial dissolution.

A limited partnership is dissolved and its affairs shall be
wound up upon the happening of the first to occur of the
following:

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

(2) Upon the happening of events specified in writing in
the partnership agreement;

(3) The written consent of all partners;

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

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

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

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

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

(2) The state and date of its formation;

(3) The name and address of any agent for service of
process on the foreign limited partnership whom the
foreign limited partnership elects to appoint: Provided,
that the agent must be an individual resident of this state, a
domestic corporation, or a foreign corporation having a
place of business in and authorized to do business in this
state;

(4) A statement that the secretary of state is appointed
the agent of the foreign limited partnership for service of
process if no agent has been appointed under subdivision (3)
of this section or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;

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

(6) The name and business address of each general partner; and

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

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

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

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

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

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

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

(c) The certificate of registration, or a duly certified copy thereof, shall be recorded in the office of the clerk of the county commission of the county where the principal office of the limited partnership in this state is located. If such limited partnership does not maintain a principal office in this state, the recordation may be completed in any county in which the limited partnership is conducting its affairs or doing or transacting business. This filing, or failure to file, shall in no way affect the formation of the limited partnership. Only the filing in the office of the secretary of state, required by section eight of this article, shall determine the validity of the limited partnership.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1986.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within .........this the ....... day of ....... 1986.

Governor
PRESENTED TO THE
GOVERNOR
Date 2/18/86
Time 11:10 A.M.