

# E N R O L L E D

COMMITTEE SUBSTITUTE

for

## **H. B. 2567**

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(BY DELEGATE(S) MORGAN, STEPHENS, DISERIO,  
JONES, PAXTON, P. SMITH AND STAGGERS)

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[Passed April 13, 2013; in effect ninety days from passage.]

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AN ACT to amend and reenact §47-9-44 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated §47-9-10a and §47-9-53a, all relating to limited partnerships; authorizing the Secretary of State to administratively dissolve and reinstate limited partnerships; allowing appeals to the circuit court; and authorizing the Secretary of State to revoke and reinstate certificates of authority of foreign limited partnerships.

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

That §47-9-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §47-9-10a and §47-9-53a, all to read as follows:

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

**§47-9-10a. Administrative dissolution of a limited partnership; reinstatement; appeals.**

1 (a) The Secretary of State may commence a proceeding to  
2 administratively dissolve a limited partnership if the limited  
3 partnership does not:

4 (1) Pay all applicable fees, franchise taxes or penalties  
5 imposed by this chapter or other law within sixty days after the  
6 due date; or

7 (2) Deliver its annual report to the Secretary of State within  
8 sixty days after the due date: or

9 (3) The professional license of one or more of the license  
10 holders is revoked by a professional licensing board and the  
11 license is required for the continued operation of the limited  
12 partnership; or

13 (4) The limited partnership is in default with the Bureau of  
14 Employment Programs as provided in section six, article two,  
15 chapter twenty-one-a of this code.

16 (b) If the Secretary of State determines that adequate  
17 grounds exist to administratively dissolve a limited partnership,  
18 the Secretary of State shall make and file a record of the  
19 determination and serve the limited partnership with a notice of  
20 the determination along with copy of the record by certified  
21 mail.

22 (1)(A) The limited partnership must correct each issue  
23 described in the dissolution record or take reasonable steps  
24 toward correcting each issue within sixty days of service of the  
25 record on the limited partnership.

26 (B) If the limited partnership fails to take adequate steps  
27 toward correcting the issue or issues described in the record, the  
28 Secretary of State may administratively dissolve the limited  
29 partnership by signing the certification of dissolution.

30 (C) The Secretary of State shall file the original certificate  
31 of dissolution and serve a copy of the certificate of dissolution  
32 to the limited partnership by certified mail.

33       (2) A limited partnership that has been administratively  
34 dissolved may continue its existence only to the extent necessary  
35 to wind up and liquidate its business and affairs.

36       (3) The administrative dissolution of a limited partnership  
37 does not terminate the authority of its agent for service of  
38 process.

39       (c) A limited partnership that has been administratively  
40 dissolved may apply to the Secretary of State for reinstatement  
41 within two years after the effective date of dissolution. The  
42 application for reinstatement must:

43       (1) Recite the name of the limited partnership and the  
44 effective date of its administrative dissolution;

45       (2) Demonstrate that the grounds for dissolution either did  
46 not exist or have been eliminated;

47       (3) Demonstrate that the limited partnership's name satisfies  
48 the requirements of section two, article nine, chapter forty-seven  
49 of this code; and

50       (4) Contain a certificate from the Tax Commissioner reciting  
51 that all taxes owed by the limited partnership have been paid.

52       (d)(1) If the Secretary of State determines that the applica-  
53 tion for reinstatement contains the information required by  
54 subsection (c) of this section and that the information is accurate,  
55 the Secretary of State shall cancel the certificate of dissolution  
56 and prepare a certificate of reinstatement that recites this  
57 determination and the effective date of reinstatement.

58       (2) The Secretary of State shall file the certificate of  
59 reinstatement and serve the limited partnership with a copy of  
60 the certificate.

61       (e) When the Secretary of State grants a reinstatement, the  
62 reinstatement relates back to and takes effect as of the effective  
63 date of the administrative dissolution and the limited partnership  
64 resumes its business as if the administrative dissolution had  
65 never occurred.

66       (f) If the Secretary of State denies a limited partnership's  
67 application for reinstatement following administrative dissolu-

68 tion, the Secretary of State shall serve the limited partnership  
69 with a notice that explains the reason or reasons for denial.

70 (g) A limited partnership may appeal a denial of reinstatement by filing a petition to set aside the dissolution in the circuit  
71 court of Kanawha County within thirty days after the date upon  
72 which the limited partnership received notice of the denial of  
73 reinstatement. The petition shall include a copy of the Secretary  
74 of State's certificate of dissolution, the limited partnership's  
75 application for reinstatement and the Secretary of State's notice  
76 of denial. A copy of the petition shall be served on the Secretary  
77 of State by certified mail.  
78

79 (h) If a reinstatement is granted by the court, the reinstatement relates back to and takes effect as of the effective date of  
80 the administrative dissolution and the limited partnership  
81 resumes its business as if the administrative dissolution had  
82 never occurred.  
83

**§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  
3 following:

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

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

8 (3) The written consent of all partners;

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

19 (5) Entry of a decree of judicial dissolution under section  
20 forty-five of this article; or

21 (6) Signing of a certificate of dissolution by the Secretary of  
22 State under section ten-a of this article.

**§47-9-53a. Revocation and reinstatement of foreign limited  
partnership certificates of authority.**

1 (a) The Secretary of State may revoke a certificate of  
2 authority of a foreign limited partnership to transact business in  
3 this state in the manner set forth in subsection (b) of this section  
4 if:

5 (1) The limited partnership fails to:

6 (A) Pay all applicable fees, franchise taxes and penalties  
7 owed to the state within sixty days after the due date;

8 (B) Deliver its annual report within sixty days of the due  
9 date; or

10 (C) File a statement to change a name or business address of  
11 an agent as required by this article; or

12 (2) The limited partnership has made a misrepresentation of  
13 any material fact in any application, report, affidavit or other  
14 record submitted pursuant to this article; or

15 (3) The professional license of one or more of the license  
16 holders is revoked by a professional licensing board and the  
17 license is required for the continued operation of the limited  
18 partnership; or

19 (4) The limited partnership is in default with the Bureau of  
20 Employment Programs as provided in section six, article two,  
21 chapter twenty-one-a of this code.

22 (b)(1) The Secretary of State may not revoke a certificate of  
23 authority of a foreign limited partnership unless the Secretary of  
24 State serves notice to the foreign limited partnership of the  
25 Secretary's intent to revoke the foreign limited partnership's  
26 certificate of authority at least sixty days prior to the effective  
27 date of the revocation, by a notice addressed to the foreign  
28 limited partnership's principal office.

29           (2) The notice must specify the cause for the revocation of  
30 the certificate of authority.

31           (3) The authority of the foreign limited partnership to  
32 transact business in this state ceases on the effective date of the  
33 revocation.

34           (c) A foreign limited partnership that has been administra-  
35 tively revoked may apply to the Secretary of State for reinstatement  
36 within two years after the effective date of revocation. The  
37 application must:

38           (1) Recite the name of the foreign limited partnership and  
39 the effective date of its administrative revocation;

40           (2) Demonstrate that the grounds for revocation either did  
41 not exist or have been eliminated;

42           (3) Demonstrate that the foreign limited partnership's name  
43 satisfies the requirements of section two, article nine, chapter  
44 forty-seven of this code; and

45           (4) Contain a certificate from the Tax Commissioner reciting  
46 that all taxes owed by the foreign limited partnership have been  
47 paid.

48           (d) If the Secretary of State determines that the application  
49 for reinstatement contains the information required by subsection  
50 (c) of this section and that the information is correct, the  
51 Secretary of State shall cancel the certificate of revocation and  
52 prepare a certificate of reinstatement that recites this determina-  
53 tion and the effective date of reinstatement.

54           (2) The Secretary of State shall file the certificate of  
55 reinstatement, and serve the foreign limited partnership with a  
56 copy of the certificate.

57           (e) When the Secretary of State grants a reinstatement, the  
58 reinstatement relates back to and takes effect as of the effective  
59 date of the administrative revocation and the foreign limited  
60 partnership resumes its business as if the administrative revoca-  
61 tion had never occurred.

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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2013.

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*Governor*

