

COMMITTEE SUBSTITUTE

for

H. B. 2567

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

(Originating on the Committee on the Judiciary)

[March 11, 2013]

A BILL 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, taxes or penalties imposed by this
5 chapter or other law within sixty days after the due date; or

6 (2) Deliver its annual report to the Secretary of State within
7 sixty days after the due date.

8 (b) If the Secretary of State determines that adequate
9 grounds exist to administratively dissolve a limited partnership,
10 the Secretary of State shall make and file a record of the
11 determination and serve the limited partnership with a notice of
12 the determination along with copy of the record by certified
13 mail.

14 (1)(A) The limited partnership must correct each issue
15 described in the dissolution record or take reasonable steps
16 toward correcting each issue within sixty days of service of the
17 record on the limited partnership.

18 (B) If the limited partnership fails to take adequate steps
19 toward correcting the issue or issues described in the record, the

20 Secretary of State may administratively dissolve the limited
21 partnership by signing the certification of dissolution.

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

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

28 (3) The administrative dissolution of a limited partnership
29 does not terminate the authority of its agent for service of
30 process.

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

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

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

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

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

44 (d)(1) If the Secretary of State determines that the applica-
45 tion for reinstatement contains the information required by
46 subsection (c) of this section and that the information is accurate,
47 the Secretary of State shall cancel the certificate of dissolution
48 and prepare a certificate of reinstatement that recites this
49 determination and the effective date of reinstatement.

50 (2) The Secretary of State shall file the certificate of
51 reinstatement and serve the limited partnership with a copy of
52 the certificate.

53 (e) When the Secretary of State grants a reinstatement, the
54 reinstatement relates back to and takes effect as of the effective
55 date of the administrative dissolution and the limited partnership
56 resumes its business as if the administrative dissolution had
57 never occurred.

58 (f) If the Secretary of State denies a limited partnership's
59 application for reinstatement following administrative dissolu-
60 tion, the Secretary of State shall serve the limited partnership
61 with a notice that explains the reason or reasons for denial.

62 (g) A limited partnership may appeal a denial of reinstate-
63 ment by filing a petition to set aside the dissolution in the circuit
64 court of Kanawha County within thirty days after the date upon
65 which the limited partnership received notice of the denial of
66 reinstatement. The petition shall include a copy of the Secretary

67 of State's certificate of dissolution, the limited partnership's
68 application for reinstatement and the Secretary of State's notice
69 of denial. A copy of the petition shall be served on the Secretary
70 of State by certified mail.

71 (h) If a reinstatement is granted by the court, the reinstatement
72 relates back to and takes effect as of the effective date of
73 the administrative dissolution and the limited partnership
74 resumes its business as if the administrative dissolution had
75 never occurred.

§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; or

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, taxes and penalties owed to the
7 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.

15 (b)(1) The Secretary of State may not revoke a certificate of
16 authority of a foreign limited partnership unless the Secretary of
17 State serves notice to the foreign limited partnership of the
18 Secretary's intent to revoke the foreign limited partnership's
19 certificate of authority at least sixty days prior to the effective
20 date of the revocation, by a notice addressed to the foreign
21 limited partnership's principal office.

22 (2) The notice must specify the cause for the revocation of
23 the certificate of authority.

24 (3) The authority of the foreign limited partnership to
25 transact business in this state ceases on the effective date of the
26 revocation.

27 (c) A foreign limited partnership that has been administra-
28 tively revoked may apply to the Secretary of State for reinstate-
29 ment within two years after the effective date of revocation. The
30 application must:

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

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

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

38 (4) Contain a certificate from the Tax Commissioner reciting
39 that all taxes owed by the foreign limited partnership have been
40 paid.

41 (d) If the Secretary of State determines that the application
42 for reinstatement contains the information required by subsec-
43 tion (c) of this section and that the information is correct, the
44 Secretary of State shall cancel the certificate of revocation and
45 prepare a certificate of reinstatement that recites this determina-
46 tion and the effective date of reinstatement.

47 (2) The Secretary of State shall file the certificate of
48 reinstatement, and serve the foreign limited partnership with a
49 copy of the certificate.

50 (e) When the Secretary of State grants a reinstatement, the
51 reinstatement relates back to and takes effect as of the effective
52 date of the administrative revocation and the foreign limited
53 partnership resumes its business as if the administrative revoca-
54 tion had never occurred.