

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 2567**

5  
6 (By Delegates Morgan, Stephens, Diserio,  
7 Jones, Paxton, P. Smith and Staggers)

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

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11 AN ACT to amend and reenact §47-9-44 of the Code of West Virginia,  
12 1931, as amended, and to amend said code by adding thereto two  
13 new sections, designated §47-9-10a and §47-9-53a, all relating  
14 to limited partnerships; authorizing the Secretary of State to  
15 administratively dissolve and reinstate limited partnerships;  
16 allowing appeals to the circuit court; and authorizing the  
17 Secretary of State to revoke and reinstate certificates of  
18 authority of foreign limited partnerships.

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

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

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

25 **§47-9-10a. Administrative dissolution of a limited partnership;**  
26 **reinstatement; appeals.**

27 (a) The Secretary of State may commence a proceeding to  
28 administratively dissolve a limited partnership if the limited

1 partnership does not:

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

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

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

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

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

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

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

27 (C) The Secretary of State shall file the original certificate  
28 of dissolution and serve a copy of the certificate of dissolution

1 to the limited partnership by certified mail.

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

5 (3) The administrative dissolution of a limited partnership  
6 does not terminate the authority of its agent for service of  
7 process.

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

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

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

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

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

21 (d)(1) If the Secretary of State determines that the  
22 application for reinstatement contains the information required by  
23 subsection (c) of this section and that the information is  
24 accurate, the Secretary of State shall cancel the certificate of  
25 dissolution and prepare a certificate of reinstatement that recites  
26 this determination and the effective date of reinstatement.

27 (2) The Secretary of State shall file the certificate of  
28 reinstatement and serve the limited partnership with a copy of the

1 certificate.

2 (e) When the Secretary of State grants a reinstatement, the  
3 reinstatement relates back to and takes effect as of the effective  
4 date of the administrative dissolution and the limited partnership  
5 resumes its business as if the administrative dissolution had never  
6 occurred.

7 (f) If the Secretary of State denies a limited partnership's  
8 application for reinstatement following administrative dissolution,  
9 the Secretary of State shall serve the limited partnership with a  
10 notice that explains the reason or reasons for denial.

11 (g) A limited partnership may appeal a denial of reinstatement  
12 by filing a petition to set aside the dissolution in the circuit  
13 court of Kanawha County within thirty days after the date upon  
14 which the limited partnership received notice of the denial of  
15 reinstatement. The petition shall include a copy of the Secretary  
16 of State's certificate of dissolution, the limited partnership's  
17 application for reinstatement and the Secretary of State's notice  
18 of denial. A copy of the petition shall be served on the Secretary  
19 of State by certified mail.

20 (h) If a reinstatement is granted by the court, the  
21 reinstatement relates back to and takes effect as of the effective  
22 date of the administrative dissolution and the limited partnership  
23 resumes its business as if the administrative dissolution had never  
24 occurred.

25 **§47-9-44. Nonjudicial dissolution.**

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

28 (1) At the time or upon the happening of events specified in

1 the certificate of limited partnership;

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

4 (3) The written consent of all partners;

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

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

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

19 **§47-9-53a. Revocation and reinstatement of foreign limited**  
20 **partnership certificates of authority.**

21 (a) The Secretary of State may revoke a certificate of  
22 authority of a foreign limited partnership to transact business in  
23 this state in the manner set forth in subsection (b) of this  
24 section if:

25 (1) The limited partnership fails to:

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

28 (B) Deliver its annual report within sixty days of the due

1 date; or

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

4 (2) The limited partnership has made a misrepresentation of  
5 any material fact in any application, report, affidavit or other  
6 record submitted pursuant to this article: or

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

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

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

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

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

26 (c) A foreign limited partnership that has been  
27 administratively revoked may apply to the Secretary of State for  
28 reinstatement within two years after the effective date of

1 revocation. The application must:

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

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

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

9 (4) Contain a certificate from the Tax Commissioner reciting  
10 that all taxes owed by the foreign limited partnership have been  
11 paid.

12 (d) If the Secretary of State determines that the application  
13 for reinstatement contains the information required by subsection  
14 (c) of this section and that the information is correct, the  
15 Secretary of State shall cancel the certificate of revocation and  
16 prepare a certificate of reinstatement that recites this  
17 determination and the effective date of reinstatement.

18 (2) The Secretary of State shall file the certificate of  
19 reinstatement, and serve the foreign limited partnership with a  
20 copy of the certificate.

21 (e) When the Secretary of State grants a reinstatement, the  
22 reinstatement relates back to and takes effect as of the effective  
23 date of the administrative revocation and the foreign limited  
24 partnership resumes its business as if the administrative  
25 revocation had never occurred.