

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2567**

4  
5 (By Delegates Morgan, Stephens, Diserio,  
6 Jones, Paxton, P. Smith and Staggers)

7 (Originating on the Committee on the Judiciary)

8 [March 11, 2013]

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

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

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

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

24 **§47-9-10a. Administrative dissolution of a limited partnership;**  
25 **reinstatement; appeals.**

26 (a) The Secretary of State may commence a proceeding to  
27 administratively dissolve a limited partnership if the limited  
28 partnership does not:

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

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

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

10       (1) (A) The limited partnership must correct each issue  
11 described in the dissolution record or take reasonable steps toward  
12 correcting each issue within sixty days of service of the record on  
13 the limited partnership.

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

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

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

24       (3) The administrative dissolution of a limited partnership  
25 does not terminate the authority of its agent for service of  
26 process.

27       (c) A limited partnership that has been administratively  
28 dissolved may apply to the Secretary of State for reinstatement

1 within two years after the effective date of dissolution. The  
2 application for reinstatement must:

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

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

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

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

12 (d)(1) If the Secretary of State determines that the  
13 application for reinstatement contains the information required by  
14 subsection (c) of this section and that the information is  
15 accurate, the Secretary of State shall cancel the certificate of  
16 dissolution and prepare a certificate of reinstatement that recites  
17 this determination and the effective date of reinstatement.

18 (2) The Secretary of State shall file the certificate of  
19 reinstatement and serve the limited partnership with a copy of the  
20 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 dissolution and the limited partnership  
24 resumes its business as if the administrative dissolution had never  
25 occurred.

26 (f) If the Secretary of State denies a limited partnership's  
27 application for reinstatement following administrative dissolution,  
28 the Secretary of State shall serve the limited partnership with a

1 notice that explains the reason or reasons for denial.

2 (g) A limited partnership may appeal a denial of reinstatement  
3 by filing a petition to set aside the dissolution in the circuit  
4 court of Kanawha County within thirty days after the date upon  
5 which the limited partnership received notice of the denial of  
6 reinstatement. The petition shall include a copy of the Secretary  
7 of State's certificate of dissolution, the limited partnership's  
8 application for reinstatement and the Secretary of State's notice  
9 of denial. A copy of the petition shall be served on the Secretary  
10 of State by certified mail.

11 (h) If a reinstatement is granted by the court, the  
12 reinstatement relates back to and takes effect as of the effective  
13 date of the administrative dissolution and the limited partnership  
14 resumes its business as if the administrative dissolution had never  
15 occurred.

16 **§47-9-44. Nonjudicial dissolution.**

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

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

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

23 (3) The written consent of all partners;

24 (4) An event of withdrawal of a general partner, unless at the  
25 time there is at least one other general partner and the written  
26 provisions of the partnership agreement permit the business of the  
27 limited partnership to be carried on by the remaining general  
28 partner and that partner does so, but the limited partnership is

1 not dissolved and is not required to be wound up by reason of any  
2 event of withdrawal if, within ninety days after the withdrawal,  
3 all partners agree in writing to continue the business of the  
4 limited partnership and to the appointment of one or more  
5 additional general partners if necessary or desired; ~~or~~

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

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

10 **§47-9-53a. Revocation and reinstatement of foreign limited**  
11 **partnership certificates of authority.**

12 (a) The Secretary of State may revoke a certificate of  
13 authority of a foreign limited partnership to transact business in  
14 this state in the manner set forth in subsection (b) of this  
15 section if:

16 (1) The limited partnership fails to:

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

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

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

23 (2) The limited partnership has made a misrepresentation of  
24 any material fact in any application, report, affidavit or other  
25 record submitted pursuant to this article.

26 (b) (1) The Secretary of State may not revoke a certificate of  
27 authority of a foreign limited partnership unless the Secretary of  
28 State serves notice to the foreign limited partnership of the

1 Secretary's intent to revoke the foreign limited partnership's  
2 certificate of authority at least sixty days prior to the effective  
3 date of the revocation, by a notice addressed to the foreign  
4 limited partnership's principal office.

5 (2) The notice must specify the cause for the revocation of  
6 the certificate of authority.

7 (3) The authority of the foreign limited partnership to  
8 transact business in this state ceases on the effective date of the  
9 revocation.

10 (c) A foreign limited partnership that has been  
11 administratively revoked may apply to the Secretary of State for  
12 reinstatement within two years after the effective date of  
13 revocation. The application must:

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

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

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

21 (4) Contain a certificate from the Tax Commissioner reciting  
22 that all taxes owed by the foreign limited partnership have been  
23 paid.

24 (d) If the Secretary of State determines that the application  
25 for reinstatement contains the information required by subsection  
26 (c) of this section and that the information is correct, the  
27 Secretary of State shall cancel the certificate of revocation and  
28 prepare a certificate of reinstatement that recites this

1 determination and the effective date of reinstatement.

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

5       (e) When the Secretary of State grants a reinstatement, the  
6 reinstatement relates back to and takes effect as of the effective  
7 date of the administrative revocation and the foreign limited  
8 partnership resumes its business as if the administrative  
9 revocation had never occurred.