

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 320**

(By Senators D. Hall and Trump)

---

[Originating in the Committee on  
the Judiciary;  
reported March 2, 2015.]

---

A BILL to amend and reenact §31B-10-1006 of the Code of West Virginia, 1931, as amended; and to amend and reenact §47-9-53a of said code, all relating to notices of revocation of certificate of authority; requiring notice of revocation to foreign limited liability companies and foreign limited partnerships to be sent to their registered agent or if there is no registered agent to their principal office.

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

That §31B-10-1006 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §47-9-53a of said code be amended and reenacted, all to read as follows:

**CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.**

**ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.**

**§31B-10-1006. Revocation and reinstatement of certificate of authority.**

1           (a) ~~A~~ The Secretary of State may revoke a certificate of authority of a foreign limited liability  
2 company to transact business in this state ~~may be revoked by the Secretary of State~~ in the manner

[COM. SUB. FOR S. B. NO. 320]

1 provided in subsection (b) of this section if:

2 (1) The company fails to:

3 (i) Pay any fees, taxes and penalties owed to this state;

4 (ii) Deliver its annual report required under section two hundred eleven, article two of this  
5 chapter to the Secretary of State within sixty days after it is due; or

6 (iii) File a statement of a change in the name or business address of the agent as required by  
7 this article;

8 (2) A misrepresentation has been made of any material matter in any application, report,  
9 affidavit or other record submitted by the company pursuant to this article;

10 (3) The professional license of one or more of the license holders is revoked by a professional  
11 licensing board and the license is or all the licenses are required for the continued operation of the  
12 company; or

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

15 (b) The Secretary of State may not revoke a certificate of authority of a foreign limited  
16 liability company unless the Secretary of State sends the company notice of the revocation, at least  
17 sixty days before its effective date, by a record addressed to its ~~principal office~~ registered agent, or  
18 if there is no registered agent, to the principal office. The notice ~~must~~ shall specify the cause for the  
19 revocation of the certificate of authority. The authority of the company to transact business in this  
20 state ceases on the effective date of the revocation unless the foreign limited liability company cures  
21 the failure before that date.

[COM. SUB. FOR S. B. NO. 320]

1 (c) A foreign limited liability company administratively revoked may apply to the Secretary  
2 of State for reinstatement within two years after the effective date of revocation. The application  
3 ~~must~~ shall:

4 (1) Recite the name of the company and the effective date of its administrative revocation;

5 (2) State that the ground for revocation either did not exist or has been eliminated;

6 (3) State that the company's name satisfies the requirements of section one thousand five of  
7 this article; and

8 (4) Contain a certificate from the Tax Commissioner reciting that all taxes owed by the  
9 company have been paid.

10 (d) If the Secretary of State determines that the application contains the information required  
11 by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel  
12 the certificate of revocation and prepare a certificate of reinstatement that recites this determination  
13 and the effective date of reinstatement, file the original of the certificate and serve the company with  
14 a copy of the certificate.

15 (e) When reinstatement is effective, it relates back to and takes effect as of the effective date  
16 of the administrative revocation and the company may resume its business as if the administrative  
17 revocation had never occurred.

18 **CHAPTER 47. REGULATION OF TRADE.**

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

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

[COM. SUB. FOR S. B. NO. 320]

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

4 (1) The limited partnership fails to:

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

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

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

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

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

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

16 (b) (1) The Secretary of State may not revoke a certificate of authority of a foreign limited  
17 partnership unless the Secretary of State serves notice to the foreign limited partnership of the  
18 secretary's intent to revoke the foreign limited partnership's certificate of authority at least sixty days  
19 prior to the effective date of the revocation by a notice addressed to the foreign limited partnership's  
20 ~~principal office~~ registered agent, or if there is no registered agent, to the principal office.

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

[COM. SUB. FOR S. B. NO. 320]

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

3 (c) A foreign limited partnership that has been administratively revoked may apply to the  
4 Secretary of State for reinstatement within two years after the effective date of revocation. The  
5 application ~~must~~ shall:

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

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

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

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

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

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

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

**[COM. SUB. FOR S. B. NO. 320]**