

1 **Senate Bill No. 320**

2 (By Senators D. Hall and Trump)

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4 [Introduced January 27, 2015; referred to the Committee on the Judiciary .]
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8 A BILL to amend and reenact §31B-10-1006 of the Code of West Virginia, 1931, as amended; and
9 to amend and reenact §47-9-53a of said code, all relating to notices of revocation of
10 certificate of authority.

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

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

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

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

16 **§31B-10-1006. Revocation and reinstatement of certificate of authority.**

17 (a) A certificate of authority of a foreign limited liability company to transact business in this
18 state may be revoked by the Secretary of State in the manner provided in subsection (b) of this
19 section if:

20 (1) The company fails to:

21 (I) Pay any fees, taxes and penalties owed to this state;

1 (ii) Deliver its annual report required under section 2-211 to the Secretary of State within
2 sixty days after it is due; or

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

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

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

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

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

19 (c) A foreign limited liability company administratively revoked may apply to the Secretary
20 of State for reinstatement within two years after the effective date of revocation. The application
21 must:

1 (1) Recite the name of the company and the effective date of its administrative revocation;
2 (2) state that the ground for revocation either did not exist or has been eliminated; (3) state that the
3 company's name satisfies the requirements of section 10- 1005; and (4) contain a certificate from the
4 Tax Commissioner reciting that all taxes owed by the company have been paid.

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

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

13 **CHAPTER 47. REGULATION OF TRADE.**

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

15 **§47-9-53a. Revocation and reinstatement of foreign limited partnership certificates of**
16 **authority.**

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

20 (1) The limited partnership fails to:

21 (A) Pay all applicable fees, franchise taxes and penalties owed to the state within sixty days

1 after the due date;

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

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

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

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

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

11 (b)(1) The Secretary of State may not revoke a certificate of authority of a foreign limited
12 partnership unless the Secretary of State serves notice to the foreign limited partnership of the
13 Secretary's intent to revoke the foreign limited partnership's certificate of authority at least sixty days
14 prior to the effective date of the revocation, by a notice addressed to the foreign limited partnership's
15 principal office registered agent, or if there is no registered agent, to the principal office.

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to standardize the process for notification of revocation of certificate of authority for foreign limited liability companies and foreign limited partnerships with that of other business types.

Strike-throughs indicate language that would be stricken from the present law. Underlines indicate new language.