

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 320**

(By Senators D. Hall and Trump)

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

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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

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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) ~~The Secretary of State may revoke~~ a certificate of  
2 authority of a foreign limited liability company to transact business  
3 in this state ~~may be revoked by the Secretary of State~~ in the manner  
4 provided in subsection (b) of this section if:

5           (1) The company fails to:

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

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

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

12          (2) A misrepresentation has been made of any material

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1 matter in any application, report, affidavit or other record submitted  
2 by the company pursuant to this article;

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

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

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

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

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

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

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

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

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

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

5 **CHAPTER 47. REGULATION OF TRADE.**

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

7 **§47-9-53a. Revocation and reinstatement of foreign limited**  
8 **partnership certificates of authority.**

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

12 (1) The limited partnership fails to:

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

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

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

19 (2) The limited partnership has made a misrepresentation of

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1 any material fact in any application, report, affidavit or other record  
2 submitted pursuant to this article; or

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

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

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

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

19 (3) The authority of the foreign limited partnership to

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1 transact business in this state ceases on the effective date of the  
2 revocation.

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

6 The application ~~must~~shall:

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

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

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

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

17 (d) If the Secretary of State determines that the application  
18 for reinstatement contains the information required by subsection  
19 (c) of this section and that the information is correct, the Secretary

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1 of State shall cancel the certificate of revocation and prepare a  
2 certificate of reinstatement that recites this determination and the  
3 effective date of reinstatement.

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

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