

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 518

BY SENATOR RUCKER

[Originating in the Committee on the Judiciary;

reported on March 11, 2021]

1 A BILL to amend and reenact §31B-8-809 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §31D-14-1420 of said code; to amend and reenact §31E-13-1320 of
3 said code; and to amend and reenact §47-9-10a of said code, all relating to grounds for
4 administrative dissolution of a limited liability company, corporation, nonprofit corporation,
5 and limited partnership; providing an application process for reinstatement; and providing
6 for an appeal process for these entities.

Be it enacted by the Legislature of West Virginia:

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 8. WINDING UP COMPANY'S BUSINESS.

§31B-8-809. Grounds for administrative dissolution.

1 (a) The Secretary of State may commence a proceeding to administratively dissolve a
2 limited liability company if:

3 (1) The company fails to pay any fees, taxes, or penalties imposed by this chapter or other
4 law within 60 days after they are due;

5 (2) The company fails to deliver its annual report to the Secretary of State within 60 days
6 after it is due;

7 (3) The professional license of one or more of the license holders is revoked by a
8 professional licensing board and the license is, or all the licenses are, required for the continued
9 operation of the 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~~ §21A-2-6 of this code; or

12 (5) A misrepresentation has been made of any material matter in any application, report,
13 affidavit, or other record submitted by the company pursuant to this chapter.

14 (b) A limited liability company administratively dissolved may apply to the Secretary of
15 State for reinstatement within two years after the effective date of dissolution pursuant to the

16 procedure in §31B-8-811 of this code or appeal the Secretary of State's denial of reinstatement
17 pursuant to the procedure in §31B-8-812 of this code.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 14. DISSOLUTION.

§31D-14-1420. Grounds for administrative dissolution.

1 (a) The Secretary of State may commence a proceeding under ~~section one thousand four~~
2 ~~hundred twenty one of this article~~ §31D-14-1421 of this code to administratively dissolve a
3 corporation if:

4 (1) The corporation does not pay within 60 days after they are due any fees, franchise
5 taxes, or penalties imposed by this chapter or other law;

6 (2) The corporation does not notify the Secretary of State within 60 days that its registered
7 agent or registered office has been changed, that its registered agent has resigned, or that its
8 registered office has been discontinued;

9 (3) The corporation's period of duration stated in its articles of incorporation expires;

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

13 (5) The corporation is in default with the Bureau of Employment Programs as provided in
14 ~~section six, article two, chapter twenty one a of this code~~ §21A-2-6 of this code; or

15 (6) A misrepresentation has been made of any material matter in any application, report,
16 affidavit, or other record submitted by the corporation pursuant to this chapter.

17 (b) A corporation administratively dissolved may apply to the Secretary of State for
18 reinstatement within two years after the effective date of dissolution pursuant to the procedure in
19 §31D-14-1422 of this code or appeal the Secretary of State's denial of reinstatement pursuant to
20 the procedure in §31D-14-1423 of this code.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 13. DISSOLUTION.

§31E-13-1320. Grounds for administrative dissolution.

1 (a) The Secretary of State may commence a proceeding under ~~section one thousand three~~
2 ~~hundred twenty one of this article~~ §31E-13-1321 of this code to administratively dissolve a
3 nonprofit corporation if:

4 (1) The nonprofit corporation does not pay within 60 days after they are due any fees,
5 franchise taxes, or penalties imposed by this chapter or other law;

6 (2) The nonprofit corporation does not notify the Secretary of State within 60 days that its
7 registered agent or registered office has been changed, that its registered agent has resigned, or
8 that its registered office has been discontinued;

9 (3) The nonprofit corporation's period of duration stated in its articles of incorporation
10 expires;

11 (4) The professional license of one or more of the license holders is revoked by a
12 professional licensing board and the license is, or all the licenses are, required for the continued
13 operation of the nonprofit entity; or

14 (5) The nonprofit corporation is in default with the Bureau of Employment Programs as
15 provided in ~~section six, article two, chapter twenty one a of this code~~ §21A-2-6 of this code; or

16 (6) A misrepresentation has been made of any material matter in any application, report,
17 affidavit, or other record submitted by the nonprofit corporation pursuant to this chapter.

18 **(b) A nonprofit corporation administratively dissolved may apply to the Secretary of State**
19 **for reinstatement within two years after the effective date of dissolution pursuant to the procedure**
20 **in §31E-13-1322 of this code or appeal the Secretary of State's denial of reinstatement pursuant**
21 **to the procedure in §31E-13-1323 of this code.**

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

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

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

3 (1) Pay all applicable fees, franchise taxes, or penalties imposed by this chapter or other
4 law within 60 days after the due date; or

5 (2) Deliver its annual report to the Secretary of State within 60 days after the due date; or

6 (3) The professional license of one or more of the license holders is revoked by a
7 professional licensing board and the license is required for the continued operation of the limited
8 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~~ §21A-2-6 of this code; or

11 (5) A misrepresentation has been made of any material matter in any application, report,
12 affidavit, or other record submitted by the limited partnership pursuant to this chapter.

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

17 (1)(A) The limited partnership must correct each issue described in the dissolution record
18 or take reasonable steps toward correcting each issue within 60 days of service of the record on
19 the limited partnership.

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

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

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

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

29 (c) A limited partnership that has been administratively dissolved may apply to the
30 Secretary of State for reinstatement within two years after the effective date of dissolution. The
31 application for reinstatement ~~must~~ shall:

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

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

36 (3) Demonstrate that the limited partnership's name satisfies the requirements of ~~section~~
37 ~~two, article nine, chapter forty seven of this code~~ §47-9-2 of this code; and

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

40 (d)(1) If the Secretary of State determines that the application for reinstatement contains
41 the information required by subsection (c) of this section and that the information is accurate, the
42 Secretary of State shall cancel the certificate of dissolution and prepare a certificate of
43 reinstatement that recites this determination and the effective date of reinstatement.

44 (2) The Secretary of State shall file the certificate of reinstatement and serve the limited
45 partnership with a copy of the certificate.

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

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

52 (g) A limited partnership may appeal a denial of reinstatement by filing a petition to set
53 aside the dissolution in the circuit court of Kanawha County within ~~thirty~~ 30 days after the date
54 upon which the limited partnership received notice of the denial of reinstatement. The petition
55 shall include a copy of the Secretary of State's certificate of dissolution, the limited partnership's
56 application for reinstatement and, the Secretary of State's notice of denial. A copy of the petition
57 shall be served on the Secretary of State by certified mail.

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