

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 398

BY SENATORS TRUMP, PALUMBO, GAUNCH, WILLIAMS,

BEACH, YOST AND MILLER

[Introduced January 27, 2016;

Referred to the Committee on Government Organization]

1 A BILL to amend and reenact §31B-10-1006 of the Code of West Virginia, 1931, as amended;
2 and to amend and reenact §47-9-53a of said code, all relating to notices of revocation of
3 certificate of authority to conduct business.

Be it enacted by the Legislature of West Virginia:

1 That §31B-10-1006 of the Code of West Virginia, 1931, as amended, be amended and
2 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 certificate of authority of a foreign limited liability company to transact business in
2 this state may be revoked by the Secretary of State in the manner provided in subsection (b) of
3 this section if:

4 (1) The company fails to:

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

6 (ii) Deliver its annual report required under section ~~2-214~~ two hundred eleven, article two
7 of this chapter to the Secretary of State within sixty days after it is due; or

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

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

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

15 (4) The company is in default with the ~~Bureau of Employment Programs~~ Workforce West
16 Virginia as provided in section six, article two, chapter twenty-one-a of this code.

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

24 (c) A foreign limited liability company administratively revoked may apply to the Secretary
25 of State for reinstatement within two years after the effective date of revocation. The application
26 must: (1) Recite the name of the company and the effective date of its administrative revocation;
27 (2) state that the ground for revocation either did not exist or has been eliminated; (3) state that
28 the company's name satisfies the requirements of section ~~40-4005~~ one thousand five, article ten
29 of this chapter; and (4) contain a certificate from the Tax Commissioner reciting that all taxes
30 owed by the company have been paid.

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

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

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

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

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
3 section if:

4 (1) The limited partnership fails to:

5 (A) Pay all applicable fees, franchise taxes and penalties owed to the state within sixty
6 days 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
9 this 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
13 professional licensing board and the license is required for the continued operation of the limited
14 partnership; or

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

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

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

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

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

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

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

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

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

36 (d) If the Secretary of State determines that the application for reinstatement contains the
37 information required by subsection (c) of this section and that the information is correct, the
38 Secretary of State shall cancel the certificate of revocation and prepare a certificate of
39 reinstatement that recites this determination and the effective date of reinstatement. ~~(2)~~ The
40 Secretary of State shall file the certificate of reinstatement, and serve the foreign limited
41 partnership with a copy of the certificate.

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

NOTE: The purpose of this bill is to standardize the address for notice of revocation for foreign limited liability companies and limited partnerships to match that of all other business types that must file with the Secretary of State. The registered agent would be the primary address and the principal office would be secondary if no registered agent is on file.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.