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WEST VIRGINIA
SECRETARY OF STATE

HB 2567

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2567

(By Delegate(s) Morgan, Stephens, Diserio,
Jones, Paxton, P. Smith and Staggers)



Passed April 13, 2013

In effect ninety days from passage.

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OFFICE OF THE CLERK
SECRETARY OF STATE

E N R O L L E D

COMMITTEE SUBSTITUTE

for

H. B. 2567

(BY DELEGATE(S) MORGAN, STEPHENS, DISERIO,
JONES, PAXTON, P. SMITH AND STAGGERS)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §47-9-44 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated §47-9-10a and §47-9-53a, all relating to limited partnerships; authorizing the Secretary of State to administratively dissolve and reinstate limited partnerships; allowing appeals to the circuit court; and authorizing the Secretary of State to revoke and reinstate certificates of authority of foreign limited partnerships.

Be it enacted by the Legislature of West Virginia:

That §47-9-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §47-9-10a and §47-9-53a, all to read as follows:

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
2 administratively dissolve a limited partnership if the limited
3 partnership does not:

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

7 (2) Deliver its annual report to the Secretary of State within
8 sixty days after the due date: or

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

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

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

22 (1)(A) The limited partnership must correct each issue
23 described in the dissolution record or take reasonable steps
24 toward correcting each issue within sixty days of service of the
25 record on the limited partnership.

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

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

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

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

39 (c) A limited partnership that has been administratively
40 dissolved may apply to the Secretary of State for reinstatement
41 within two years after the effective date of dissolution. The
42 application for reinstatement must:

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

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

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

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

52 (d)(1) If the Secretary of State determines that the applica-
53 tion for reinstatement contains the information required by
54 subsection (c) of this section and that the information is accurate,
55 the Secretary of State shall cancel the certificate of dissolution
56 and prepare a certificate of reinstatement that recites this
57 determination and the effective date of reinstatement.

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

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

66 (f) If the Secretary of State denies a limited partnership's
67 application for reinstatement following administrative dissolu-

68 tion, the Secretary of State shall serve the limited partnership
69 with a notice that explains the reason or reasons for denial.

70 (g) A limited partnership may appeal a denial of reinstatement by filing a petition to set aside the dissolution in the circuit
71 court of Kanawha County within thirty days after the date upon
72 which the limited partnership received notice of the denial of
73 reinstatement. The petition shall include a copy of the Secretary
74 of State's certificate of dissolution, the limited partnership's
75 application for reinstatement and the Secretary of State's notice
76 of denial. A copy of the petition shall be served on the Secretary
77 of State by certified mail.
78

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

§47-9-44. Nonjudicial dissolution.

1 A limited partnership is dissolved and its affairs shall be
2 wound up upon the happening of the first to occur of the
3 following:

4 (1) At the time or upon the happening of events specified in
5 the certificate of limited partnership;

6 (2) Upon the happening of events specified in writing in the
7 partnership agreement;

8 (3) The written consent of all partners;

9 (4) An event of withdrawal of a general partner, unless at the
10 time there is at least one other general partner and the written
11 provisions of the partnership agreement permit the business of
12 the limited partnership to be carried on by the remaining general
13 partner and that partner does so, but the limited partnership is not
14 dissolved and is not required to be wound up by reason of any
15 event of withdrawal if, within ninety days after the withdrawal,
16 all partners agree in writing to continue the business of the
17 limited partnership and to the appointment of one or more
18 additional general partners if necessary or desired;

19 (5) Entry of a decree of judicial dissolution under section
20 forty-five of this article; or

21 (6) Signing of a certificate of dissolution by the Secretary of
22 State under section ten-a of this article.

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

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

5 (1) The limited partnership fails to:

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

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

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

12 (2) The limited partnership has made a misrepresentation of
13 any material fact in any application, report, affidavit or other
14 record submitted pursuant to this article: or

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

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

22 (b)(1) The Secretary of State may not revoke a certificate of
23 authority of a foreign limited partnership unless the Secretary of
24 State serves notice to the foreign limited partnership of the
25 Secretary's intent to revoke the foreign limited partnership's
26 certificate of authority at least sixty days prior to the effective
27 date of the revocation, by a notice addressed to the foreign
28 limited partnership's principal office.

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

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

34 (c) A foreign limited partnership that has been administra-
35 tively revoked may apply to the Secretary of State for reinstatement
36 within two years after the effective date of revocation. The
37 application must:

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

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

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

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

48 (d) If the Secretary of State determines that the application
49 for reinstatement contains the information required by subsection
50 (c) of this section and that the information is correct, the
51 Secretary of State shall cancel the certificate of revocation and
52 prepare a certificate of reinstatement that recites this determina-
53 tion and the effective date of reinstatement.

54 (2) The Secretary of State shall file the certificate of
55 reinstatement, and serve the foreign limited partnership with a
56 copy of the certificate.

57 (e) When the Secretary of State grants a reinstatement, the
58 reinstatement relates back to and takes effect as of the effective
59 date of the administrative revocation and the foreign limited
60 partnership resumes its business as if the administrative revoca-
61 tion had never occurred.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Harry Wells
Chairman, House Committee

Member *Pete Filya*
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Gregg B. Saff
Clerk of the House of Delegates

Joseph M. Minard
Clerk of the Senate

R. J. ...
Speaker of the House of Delegates

Jeffery ...
President of the Senate

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The within *is approved* this the *29th*
day of *April*, 2013.

Carl Ray Tomatini
GOVERNOR

PRESENTED TO THE GOVERNOR

APR 29 2013

Time 2:10 pm