

FIRST REGULAR SESSION

HOUSE BILL NO. 461

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ZIMMERMAN (Sponsor), JONES (89), YAEGER, NANCE, GRILL, WALTON GRAY, COLONA, SCHAAF, STEVENSON, KRATKY, MORRIS, LOW, CORCORAN, ROORDA, KANDER, MUNZLINGER, LAMPE, ATKINS, TALBOY, DIEHL AND KIRKTON (Co-sponsors).

0553L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 359.681, RSMo, and to enact in lieu thereof one new section relating to the uniform limited partnership law, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 359.681, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 359.681, to read as follows:

359.681. In addition to the power and authority given the secretary of state by this chapter, the secretary of state or his designee shall have such further authority as is reasonably necessary to enable the secretary of state to administer this chapter efficiently and to perform the secretary of state's duties. This authority shall consist of, but is not limited to, the following powers:

(1) (a) The power to examine the books and records of any limited partnership to which this chapter applies, and it shall be the duty of any general partner or agent of such limited partnership to produce such books and records for examination on demand of the secretary of state or designated employee; provided, that no person shall be subject to any criminal prosecution on account of any matter or thing which may be disclosed by the examination of any limited partnership books, or records, which they may produce or exhibit for examination; or on account of any matter or thing concerning which they may make any voluntary and truthful statement in writing to the secretary of state, or designated employee. All facts obtained in the examination of the books and records of any limited partnership, or through voluntary sworn statement of any partner, agent, or employee of any limited partnership, shall be treated as

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 confidential, except insofar as official duty may require the disclosure of same; or when such
17 facts are material to any issue in any legal proceeding in which the secretary of state or
18 designated employee may be a party or called as a witness, and, if the secretary of state or
19 designated employee shall, except as herein provided, disclose any information relative to the
20 private accounts, affairs, and transactions of any such limited partnership, he shall be deemed
21 guilty of a class C misdemeanor.

22 (b) If any general partner, or registered agent, of any such limited partnership shall refuse
23 the demand of the secretary of state, or designated employee, to exhibit the books and records
24 of such limited partnership for examination, he, or they, shall be deemed guilty of a class B
25 misdemeanor.

26 (2) (a) The power to cancel or disapprove any certificate of limited partnership or other
27 filing required under this chapter, if the limited partnership fails to comply with the provisions
28 of this chapter by failing to file required documents under this chapter by failing to maintain a
29 registered agent, by failing to pay the required filing fees, by using fraud or deception in effecting
30 any filing, by filing a required document containing a false statement, or by violating any section
31 or sections of the criminal laws of Missouri, the federal government or any other state of the
32 United States. Thirty days before such cancellation shall take effect, the secretary of state shall
33 notify the limited partnership with written notice, either personally or by mail. If mailed, the
34 notice shall be deemed delivered five days after it is deposited in the United States mail in a
35 sealed envelope addressed to such limited partnership's last registered agent and office or to one
36 of the limited partnership's general partners. The written notice of the secretary of state's
37 proposed cancellation to the limited partnership, domestic or foreign, will specify the reasons for
38 such action.

39 (b) The limited partnership may appeal this notice of proposed cancellation to the circuit
40 court of the county in which the registered office of such limited partnership is or is proposed
41 to be situated by filing with the clerk of such court a petition setting forth a copy of the certificate
42 of limited partnership or other relevant documents and a copy of the proposed written
43 cancellation thereof by the secretary of state, such petition to be filed within thirty days after
44 notice of such cancellation shall have been given, and the matter shall be tried by the court, and
45 the court shall either sustain the action of the secretary of state or direct him to take such action
46 as the court may deem proper. An appeal from the circuit court in such a case shall be allowed
47 as in civil action.

48 (c) The limited partnership may provide information to the secretary of state that would
49 allow the secretary of state to withdraw the notice of proposed cancellation. This information
50 may consist of, but need not be limited to, corrected statements and documents, new filings,
51 affidavits and certified copies of other filed documents.

52 (3) The power to rescind a cancellation provided for in subsection 2 of this section upon
53 compliance with either of the following:

54 (a) The affected limited partnership provides the necessary documents and affidavits
55 indicating the limited partnership has corrected the conditions causing the proposed cancellation
56 or the cancellation;

57 (b) The limited partnership provides the correct statements or documentation that the
58 limited partnership is not in violation of any section of the criminal code.

59 (4) The power to charge late filing fees for any filing fee required under this chapter.
60 Late filing fees shall be assessed at a rate of ten dollars for each thirty-day period of delinquency.

61 **(5) (a) The power to administratively cancel a certificate of limited partnership if**
62 **the limited partnership's period of duration stated in the certificate of limited partnership**
63 **expires.**

64 **(b) Not less than thirty days before such administrative cancellation shall take**
65 **effect, the secretary of state shall notify the limited partnership with written notice, either**
66 **personally or by mail. If mailed, the notice shall be deemed delivered five days after it is**
67 **deposited in the United States mail in a sealed envelope addressed to such limited**
68 **partnership's last registered agent and office or to one of the limited partnership's general**
69 **partners.**

70 **(c) If the limited partnership does not timely file a certificate of amendment in**
71 **accordance with section 359.101 to extend the duration of the limited partnership, which**
72 **may be any number of years or perpetual, or demonstrate to the reasonable satisfaction**
73 **of the secretary of state that the period of duration determined by the secretary of state is**
74 **incorrect, within sixty days after service of the notice is perfected by posting with the**
75 **United States Postal Service, then the secretary of state shall cancel the certificate of limited**
76 **partnership by signing a certificate of administrative cancellation that recites the grounds**
77 **for cancellation and its effective date. The secretary of state shall file the original of the**
78 **certificate and serve a copy on the limited partnership as provided in section 359.041.**

79 **(d) A limited partnership whose certificate of limited partnership has been**
80 **administratively cancelled continues its existence but may not carry on any business except**
81 **that necessary to wind up and liquidate its business and affairs under section 359.471 and**
82 **notify claimants under section 359.481.**

83 **(e) The administrative cancellation of a certificate of limited partnership does not**
84 **terminate the authority of its registered agent.**

85 **(6) (a) The power to rescind an administrative cancellation and reinstate the**
86 **certificate of limited partnership.**

87 (b) Except as otherwise provided in the partnership agreement, a limited
88 partnership whose certificate of limited partnership has been administratively cancelled
89 under subdivision (5) of this section may file a certificate of amendment in accordance with
90 section 359.101 to extend the duration of the limited partnership, which may be any
91 number or perpetual.

92 (c) A limited partnership whose certificate of limited partnership has been
93 administratively cancelled under subdivision (5) of this section may apply to the secretary
94 of state for reinstatement. The applicant shall:

95 a. Recite the name of the limited partnership and the effective date of its
96 administrative cancellation;

97 b. State that the grounds for cancellation either did not exist or have been
98 eliminated, as applicable, and be accompanied by documentation satisfactory to the
99 secretary of state evidencing the same;

100 c. State that the limited partnership's name satisfies the requirements of section
101 359.021;

102 d. Be accompanied by a reinstatement fee in the amount of two hundred fifty
103 dollars, or such greater amount as required by state regulation, plus any delinquent fees,
104 penalties, and other charges as determined by the secretary of state to then be due.

105 (d) If the secretary of state determines that the application contains the information
106 and is accompanied by the fees required in paragraph (c) of subdivision (6) of this section
107 and that the information and fees are correct, the secretary of state shall rescind the
108 certificate of administrative cancellation and prepare a certificate of reinstatement that
109 recites his or her determination and the effective date of reinstatement, file the original of
110 the certificate, and serve a copy on the limited partnership as provided in section 359.041.

111 (e) When the reinstatement is effective, it shall relate back to and take effect as of
112 the effective date of the administrative cancellation of the certificate of limited partnership
113 and the limited partnership may continue carrying on its business as if the administrative
114 cancellation had never occurred.

115 (f) In the event the name of the limited partnership was reissued by the secretary
116 of state to another entity prior to the time application for reinstatement was filed, the
117 limited partnership applying for reinstatement may elect to reinstate using a new name
118 that complies with the requirements of section 359.021 and that has been approved by
119 appropriate action of the limited partnership for changing the name thereof.

120 (g) If the secretary of state denies a limited partnership's application for
121 reinstatement following administrative cancellation of the certificate of limited

122 **partnership, he or she shall serve the limited partnership as provided in section 359.041**
123 **with a written notice that explains the reason or reasons for denial.**

124 **(h) The limited partnership may appeal a denial of reinstatement as provided for**
125 **in paragraph (b) of subdivision (2) of this section.**

126 **(7) Subdivision (6) of this section shall apply to any limited partnership whose**
127 **certificate of limited partnership was cancelled because such limited partnership's period**
128 **of duration stated in the certificate of limited partnership expired on or after August 28,**
129 **2003.**

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