Senate Bill No. 619

(By Senators Prezioso and Minard)

[Introduced February 16, 2012; referred to the Committee on the Judiciary; and then to the Committee on Finance.]

A BILL to amend and reenact §59-1-2a of the Code of West Virginia, 1931, as amended, relating to annual business fees paid to the Secretary of State; clarifying that limited liability companies, foreign limited liability companies and foreign corporations are required to file annual reports; eliminating criminal penalties; changing a $100 penalty to a $50 late fee for delinquent annual reports; providing a $25 late fee for delinquent annual reports for nonprofit corporations; requiring the Secretary of State to deposit all late fees collected in its general administrative fees account; authorizing the Secretary of State to charge a fee for online purchases of data or conducting transactions online; and authorizing rule making.

Be it enacted by the Legislature of West Virginia:

That §59-1-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2a. Annual business fees to be paid to the Secretary of State; filing of annual reports; purchase of data.

(a) *Definitions*. — As used in this section:

(1) "Annual report fee" means the fee described in subsection (c) of this ~~article~~ section that is to be paid to the Secretary of State each year by corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies. After June 30, 2008, any reference in this code to a fee paid to the Secretary of State for services as a statutory attorney in fact shall mean the annual report fee described in this section.

(2) "Business activity" means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, but does not mean any of the activities of foreign corporations enumerated in subsection (b), section one thousand five hundred one, article fifteen, chapter thirty-one-d of this code, except for the activity of conducting affairs in interstate commerce when activity occurs in this state, nor does it mean any of the activities of

foreign limited liability companies enumerated in subsection (a), section one thousand three, article ten, chapter thirty-one-b of this code except for the activity of conducting affairs in interstate commerce when activity occurs in this state.

(3) "Corporation" means a "domestic corporation", a "foreign corporation" or a "nonprofit corporation".

(4) "Deliver or delivery" means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission.

(5) "Domestic corporation" means a corporation for profit which is not a foreign corporation incorporated under or subject to ~~the provisions of~~ chapter thirty-one-d of this code.

(6) "Domestic limited liability company" means a limited liability company which is not a foreign limited liability company under or subject to ~~the provisions of~~ chapter thirty-one-b of this code.

(7) "Foreign corporation" means a for-profit corporation incorporated under a law other than the laws of this state.

(8) "Foreign limited liability company" means a limited liability company organized under a law other than the laws of this state.

(9) "Limited partnership" means a partnership as defined by section one, article nine, chapter forty-seven of this code.

(10) "Nonprofit corporation" means a nonprofit corporation as defined by section one hundred fifty, article one, chapter thirty-one-e of this code.

(11) "Registration fee" means the fee for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company described in subdivision (2), subsection (a), section two of this article. The term "initial registration" also means the date upon which the registration fee is paid.

(b) *Required payment of annual report fee and filing of annual report.* — After June 30, 2008, no corporation, limited partnership, domestic limited liability company or foreign limited liability company may engage in any business activity in this state without paying the annual report fee and filing the annual report as required by this section.

(c) *Annual report fee.* — After June 30, 2008, each corporation, limited partnership, domestic limited liability company and foreign limited liability company engaged in or authorized to do business in this state shall pay an annual report fee of $25 for the services of the Secretary of State as attorney-in-fact for the corporation, limited partnership, domestic limited liability company or foreign limited liability company, and for such other administrative services as may be imposed by law upon the Secretary of State. The fee is due and payable each year after the initial registration of the corporation, limited partnership, domestic limited liability company or foreign limited liability company with the annual report described in subsection (d) of this section on or before the dates specified in subsection (e) of this section. The fee is due and payable each year with the annual report from corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection (e) of this section. The annual report fees received by the Secretary of State pursuant to ~~the provisions of~~ this subsection shall be deposited by the Secretary of State in the general administrative fees account established by section two of this article.

(d) *Annual report.* — (1) After June 30, 2008, each corporation, limited partnership, domestic limited liability company and foreign limited liability company engaged in or authorized to do business in this state shall file an annual report. The report is due each year after the initial registration of the corporation, limited partnership, domestic limited liability company or foreign limited liability company with the annual report fee described in subsection (c) of this section on or before the dates specified in subsection (e) of this section. The report is due each year from corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection (e) of this section.

(2) (A) The annual report shall be filed with the Secretary of State on forms provided by the Secretary of State for that purpose. The annual report shall, in the case of corporations, contain: (i) The address of the corporation's principal office; (ii) the names and mailing addresses of its officers and directors; (iii) the name and mailing address of the person on

whom notice of process may be served; (iv) the name and address of the corporation's parent corporation and of each subsidiary of the corporation licensed to do business in this state; (v) in the case of limited partnerships domestic limited liability companies and foreign limited liability companies, similar information with respect to their principal or controlling interests as determined by the Secretary of State or otherwise required by law to be reported to the Secretary of State; (vi) the county or county code in which the principal office address or mailing address of the company is located; (vii) business class code; and (viii) any other information the Secretary of State considers appropriate.

(B) Notwithstanding any other provision of law to the contrary, the Secretary of State shall, upon request of any person, disclose, with respect to corporations: (i) The address of the corporation's principal office; (ii) the names and addresses of its officers and directors; (iii) the name and mailing address of the person on whom notice of process may be served; (iv) the name and address of each subsidiary of the corporation and the corporation's parent corporation; (v) the county or county code in which the principal office address or mailing address of the company is located; and (vi) the business class code. The Secretary of State shall provide similar information with respect to information in its possession relating to limited partnerships domestic limited liability companies and foreign limited liability companies, similar information with respect to their principal or controlling interests.

(e) *Annual reports and fees due July 1* ~~*or April 1.* — After June 30, 2008, each corporation and limited partnership~~ — Each domestic and foreign corporation, limited partnership, limited liability company and foreign limited liability company shall file with the Secretary of State the annual report and pay the annual report fee by July 1 ~~2009, and~~ of each year. ~~thereafter, and each limited liability company and foreign limited liability shall file with the Secretary of State the annual report and pay the annual report fee by April 1, 2009, and each year thereafter: *Provided,* That each corporation and limited partnership that paid the registration fee prior to July 1, 2008 shall file the annual report and pay the annual report fee by July 1, 2008, and each year thereafter.~~

(f) *Deposit of fees.* — The annual report fees received by the Secretary of State pursuant to ~~the provisions of~~ this section shall be deposited by the Secretary of State in the general administrative fees account established by section two, article one, chapter fifty-nine of this code.

(g) *Duty to pay.* — It shall be the duty of each corporation, limited partnership, limited liability company and foreign limited liability company required to pay the annual report fees imposed under this article, to remit them with a properly completed annual report to the Secretary of State, and if it fails to do so it shall be subject to the ~~penalties~~ late fees prescribed in subsection (h) of this article.

(h) ~~*Penalties*~~ *Late fees.* — (1) The following ~~penalties~~ late fees shall be in addition to any other penalties and remedies available elsewhere in this code:

(A) *Administrative ~~penalty~~ late fee.* — The Secretary of State shall ~~impose~~ assess upon each corporation, limited partnership, limited liability company and foreign limited liability company delinquent in the payment of an annual report fee or the filing of an annual report an administrative ~~penalty~~ late fee in the amount of ~~$100~~ $50. ~~per year for each year or portion thereof in which the report which is due is not filed or the fees which are owed are not paid. This penalty shall be assessed and collected in the same manner as the fees imposed under this article.~~

~~(B) *Criminal penalty*. — It is a misdemeanor for a each corporation, limited partnership, limited liability company or foreign limited liability company to conduct business for more than thirty consecutive calendar days without paying in full the amount of annual report fees which are due or without filing the annual report which is due. Upon conviction, each officer, agent or employee shall be fined not more than $1,000. Each day or portion thereof, after the initial period of thirty consecutive days, during which business is conducted without paying in full the amount of fees which are due, or without filing the report which is due, shall constitute a separate punishable criminal offense. Failure to file shall constitute a separate punishable criminal offense and failure to pay shall constitute a separate punishable criminal offense.~~

(B) *Administrative late fees for nonprofit corporations*. — The Secretary of State shall assess each nonprofit corporation delinquent in the payment of an annual report fee or the filing of an annual report an administrative late fee in the amount of $25.

(2) All ~~penalties~~ fees collected under this subsection shall be deposited ~~into General Revenue Fund of the State Trea-~~

~~sury in the manner provided by law~~ <u>by the Secretary of State into the general administrative fees account established by section two of this article.</u>

(i) *Reports to Tax Commissioner; suspension, cancellation or withholding of business registration certificate.* — (1) The Secretary of State shall, within twenty days after the close of each month, make a report to the Tax Commissioner for the preceding month, in which he or she shall set out the name of every business entity to which he or she issued a certificate to conduct business in the State of West Virginia during that month. The report shall set out the names and addresses all corporations, limited partnerships, limited liability companies and foreign limited liability companies to which he or she issued certificates of change of name or of change of location of principal office, dissolution, withdrawal or merger. If the Secretary of State fails to make the report, it shall be the duty of the Tax Commissioner to report such failure to the Governor. A writ of mandamus shall lie for correction of such failure.

(2) Notwithstanding any other provisions of this code to the contrary, upon receipt of notice from the Secretary of State that a corporation, limited partnership, limited

liability company and foreign limited liability company is more than thirty days delinquent in the payment of annual report fees or in the filing of an annual report required by this section, the Tax Commissioner may suspend, cancel or withhold a business registration certificate issued to or applied for by the delinquent corporation, limited partnership, limited liability company or foreign limited liability company until the same is paid and filed in the manner provided for the suspension, cancellation or withholding of business registration certificates for other reasons under article twelve, chapter eleven of this code.

(j) *Purchase of data.* — The Secretary of State will provide electronically, for purchase, any data maintained in the Secretary of State's Business Organizations Database. For the electronic purchase of the entire Business Organizations Database, the cost is $12,000. For the purchase of the monthly updates of the Business Organizations Database, the cost is $1,000 per month. The fees received by the Secretary of State pursuant to ~~the provisions of~~ this subsection shall be deposited by the Secretary of State in the general administrative fees account established by section two, article one, chapter fifty-nine of this code.

(k) The Secretary of State is authorized to collect the service fee per transaction, if any, charged for an online service from any customer who purchases data or conducts transactions through an online service.

~~(k)~~ (l) *Rules.* — The Secretary of State may propose legislative rules for promulgation pursuant to article three, chapter twenty-nine-a of this code to implement ~~the provisions of~~ this article, and may, pending promulgation of those rules, promulgate emergency rules pursuant to those provisions for those purposes.

(NOTE: The purpose of this bill is to clarify that limited liability companies, foreign limited liability companies and foreign corporations are required to file annual reports. The bill eliminates criminal penalties. The bill changes a $100 penalty to a $50 late fee for delinquent annual reports. The bill provides a $25 late fee for delinquent annual reports for nonprofit corporations. The bill requires the Secretary of State to deposit all late fees collected in its general administrative fees account instead of the state's General Revenue Fund. The bill authorizes the Secretary of State to charge a fee for online purchases of data or conducting transactions online. The bill authorizes rule making.

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

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Secretary of State.)