

**ENROLLED**

**Senate Bill No. 619**

(BY SENATORS PREZIOSO AND MINARD)

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[Passed March 10, 2012; to take effect July 1, 2012.]

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AN ACT 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; allowing the Secretary of State to deposit a portion of 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 rulemaking.

*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.**

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

2       (1) “Annual report fee” means the fee described in  
3       subsection (c) of this section that is to be paid to the Secre-

4 tary of State each year by corporations, limited partnerships,  
5 domestic limited liability companies and foreign limited  
6 liability companies. After June 30, 2008, any reference in this  
7 code to a fee paid to the Secretary of State for services as a  
8 statutory attorney in fact shall mean the annual report fee  
9 described in this section.

10 (2) “Business activity” means all activities engaged in or  
11 caused to be engaged in with the object of gain or economic  
12 benefit, direct or indirect, but does not mean any of the  
13 activities of foreign corporations enumerated in subsection  
14 (b), section one thousand five hundred one, article fifteen,  
15 chapter thirty-one-d of this code, except for the activity of  
16 conducting affairs in interstate commerce when activity  
17 occurs in this state, nor does it mean any of the activities of  
18 foreign limited liability companies enumerated in subsection  
19 (a), section one thousand three, article ten, chapter thirty-  
20 one-b of this code except for the activity of conducting  
21 affairs in interstate commerce when activity occurs in this  
22 state.

23 (3) “Corporation” means a “domestic corporation”, a  
24 “foreign corporation” or a “nonprofit corporation”.

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

29 (5) “Domestic corporation” means a corporation for  
30 profit which is not a foreign corporation incorporated under  
31 or subject to chapter thirty-one-d of this code.

32 (6) “Domestic limited liability company” means a limited  
33 liability company which is not a foreign limited liability  
34 company under or subject to chapter thirty-one-b of this  
35 code.

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

38 (8) “Foreign limited liability company” means a limited  
39 liability company organized under a law other than the laws  
40 of this state.

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

43 (10) “Nonprofit corporation” means a nonprofit corpora-  
44 tion as defined by section one hundred fifty, article one,  
45 chapter thirty-one-e of this code.

46 (11) “Registration fee” means the fee for the issuance of  
47 a certificate relating to the initial registration of a corpora-  
48 tion, limited partnership, domestic limited liability company  
49 or foreign limited liability company described in subdivision  
50 (2), subsection (a), section two of this article. The term  
51 “initial registration” also means the date upon which the  
52 registration fee is paid.

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

59 (c) *Annual report fee.* — After June 30, 2008, each  
60 corporation, limited partnership, domestic limited liability  
61 company and foreign limited liability company engaged in or  
62 authorized to do business in this state shall pay an annual  
63 report fee of \$25 for the services of the Secretary of State as  
64 attorney-in-fact for the corporation, limited partnership,  
65 domestic limited liability company or foreign limited  
66 liability company, and for such other administrative services  
67 as may be imposed by law upon the Secretary of State. The  
68 fee is due and payable each year after the initial registration  
69 of the corporation, limited partnership, domestic limited  
70 liability company or foreign limited liability company with  
71 the annual report described in subsection (d) of this section  
72 on or before the dates specified in subsection (e) of this  
73 section. The fee is due and payable each year with the annual

74 report from corporations, limited partnerships, domestic  
75 limited liability companies and foreign limited liability  
76 companies that paid the registration fee prior to July 1, 2008,  
77 on or before the dates specified in subsection (e) of this  
78 section. The annual report fees received by the Secretary of  
79 State pursuant to this subsection shall be deposited by the  
80 Secretary of State in the general administrative fees account  
81 established by section two of this article.

82 (d) *Annual report.* — (1) After June 30, 2008, each  
83 corporation, limited partnership, domestic limited liability  
84 company and foreign limited liability company engaged in or  
85 authorized to do business in this state shall file an annual  
86 report. The report is due each year after the initial registra-  
87 tion of the corporation, limited partnership, domestic limited  
88 liability company or foreign limited liability company with  
89 the annual report fee described in subsection (c) of this  
90 section on or before the dates specified in subsection (e) of  
91 this section. The report is due each year from corporations,  
92 limited partnerships, domestic limited liability companies  
93 and foreign limited liability companies that paid the regis-  
94 tration fee prior to July 1, 2008, on or before the dates  
95 specified in subsection (e) of this section.

96 (2) (A) The annual report shall be filed with the Secretary  
97 of State on forms provided by the Secretary of State for that  
98 purpose. The annual report shall, in the case of corporations,  
99 contain: (i) The address of the corporation's principal office;  
100 (ii) the names and mailing addresses of its officers and  
101 directors; (iii) the name and mailing address of the person on  
102 whom notice of process may be served; (iv) the name and  
103 address of the corporation's parent corporation and of each  
104 subsidiary of the corporation licensed to do business in this  
105 state; (v) in the case of limited partnerships domestic limited  
106 liability companies and foreign limited liability companies,  
107 similar information with respect to their principal or  
108 controlling interests as determined by the Secretary of State  
109 or otherwise required by law to be reported to the Secretary  
110 of State; (vi) the county or county code in which the princi-  
111 pal office address or mailing address of the company is

112 located; (vii) business class code; and (viii) any other infor-  
113 mation the Secretary of State considers appropriate.

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

130 (e) *Annual reports and fees due July 1* — Each domestic  
131 and foreign corporation, limited partnership, limited liability  
132 company and foreign limited liability company shall file with  
133 the Secretary of State the annual report and pay the annual  
134 report fee by July 1 of each year.

135 (f) *Deposit of fees.* — The annual report fees received by  
136 the Secretary of State pursuant to this section shall be  
137 deposited by the Secretary of State in the general adminis-  
138 trative fees account established by section two, article one,  
139 chapter fifty-nine of this code.

140 (g) *Duty to pay.* — It shall be the duty of each corpora-  
141 tion, limited partnership, limited liability company and  
142 foreign limited liability company required to pay the annual  
143 report fees imposed under this article, to remit them with a  
144 properly completed annual report to the Secretary of State,  
145 and if it fails to do so it shall be subject to the late fees  
146 prescribed in subsection (h) of this article.

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

150 (A) *Administrative late fee.* — The Secretary of State  
151 shall assess upon each corporation, limited partnership,  
152 limited liability company and foreign limited liability  
153 company delinquent in the payment of an annual report fee  
154 or the filing of an annual report an administrative late fee in  
155 the amount of \$50.

156 (B) *Administrative late fees for nonprofit corporations.* —  
157 The Secretary of State shall assess each nonprofit corpora-  
158 tion delinquent in the payment of an annual report fee or the  
159 filing of an annual report an administrative late fee in the  
160 amount of \$25.

161 (2) The Secretary of State shall deposit the first \$25,000  
162 of fees collected under this subsection into the general  
163 administrative fees account established in subsection (h),  
164 section two of this article, and shall deposit any additional  
165 fees collected under this section into the General Revenue  
166 Fund of the State.

167 (i) *Reports to Tax Commissioner; suspension, cancella-*  
168 *tion or withholding of business registration certificate.* — (1)  
169 The Secretary of State shall, within twenty days after the  
170 close of each month, make a report to the Tax Commissioner  
171 for the preceding month, in which he or she shall set out the  
172 name of every business entity to which he or she issued a  
173 certificate to conduct business in the State of West Virginia  
174 during that month. The report shall set out the names and  
175 addresses all corporations, limited partnerships, limited  
176 liability companies and foreign limited liability companies  
177 to which he or she issued certificates of change of name or of  
178 change of location of principal office, dissolution, with-  
179 drawal or merger. If the Secretary of State fails to make the  
180 report, it shall be the duty of the Tax Commissioner to report  
181 such failure to the Governor. A writ of mandamus shall lie  
182 for correction of such failure.

183       (2) Notwithstanding any other provisions of this code to  
184 the contrary, upon receipt of notice from the Secretary of  
185 State that a corporation, limited partnership, limited  
186 liability company and foreign limited liability company is  
187 more than thirty days delinquent in the payment of annual  
188 report fees or in the filing of an annual report required by  
189 this section, the Tax Commissioner may suspend, cancel or  
190 withhold a business registration certificate issued to or  
191 applied for by the delinquent corporation, limited partner-  
192 ship, limited liability company or foreign limited liability  
193 company until the same is paid and filed in the manner  
194 provided for the suspension, cancellation or withholding of  
195 business registration certificates for other reasons under  
196 article twelve, chapter eleven of this code.

197       (j) *Purchase of data.* — The Secretary of State will  
198 provide electronically, for purchase, any data maintained in  
199 the Secretary of State’s Business Organizations Database.  
200 For the electronic purchase of the entire Business Organiza-  
201 tions Database, the cost is \$12,000. For the purchase of the  
202 monthly updates of the Business Organizations Database, the  
203 cost is \$1,000 per month. The fees received by the Secretary  
204 of State pursuant to this subsection shall be deposited by the  
205 Secretary of State in the general administrative fees account  
206 established by section two, article one, chapter fifty-nine of  
207 this code.

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

212       (l) *Rules.* — The Secretary of State may propose legisla-  
213 tive rules for promulgation pursuant to article three, chapter  
214 twenty-nine-a of this code to implement this article, and  
215 may, pending promulgation of those rules, promulgate  
216 emergency rules pursuant to those provisions for those  
217 purposes.