

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **for**

4 **H. B. 2554**

5
6 (By Delegates Morgan, Stephens, Staggers, Hartman,
7 Jones, Diserio and Lynch)

8 [Passed April 12, 2013; in effect ninety days from passage.]
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10

11 AN ACT to amend and reenact §31D-15-1532 of the Code of West
12 Virginia, 1931, as amended; to amend said code by adding
13 thereto a new section, designated §31D-15-1533; to amend and
14 reenact §31E-14-1432 of said code; to amend said code by
15 adding thereto a new section, designated §31E-14-1533; and to
16 amend and reenact §59-1-2 of said code, all relating to
17 providing a procedure for the Secretary of State to reinstate
18 certificates of authority for foreign corporations after an
19 administrative revocation; providing for contents of
20 application; providing for effective date of reinstatement;
21 providing for appeal from denial of reinstatement; providing
22 that reinstatement fee is the same for foreign and domestic
23 limited liability companies and foreign and domestic
24 corporations; and establishing a fee for additional parties to
25 a merger when filing articles of merger.

1 *Be it enacted by the Legislature of West Virginia:*

2 That §31D-15-1532 of the Code of West Virginia, 1931, as
3 amended, be amended and reenacted; that said code be amended by
4 adding thereto a new section, designated §31D-15-1533; that §31E-
5 14-1432 of said code be amended and reenacted; that said code be
6 amended by adding thereto a new section, designated §31E-14-1533;
7 and that §59-1-2 of said code be amended and reenacted, all to
8 read as follows:

9 **CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.**

10 **ARTICLE 15. FOREIGN CORPORATIONS.**

11 **§31D-15-1532. Reinstatement following administrative revocation.**

12 (a) A corporation that has had its certificate of
13 authority administratively revoked under section one thousand five
14 hundred thirty-one of this article may apply to the Secretary of
15 State for reinstatement within two years after the effective date
16 of revocation. The application must:

17 (1) Recite the name of the corporation and the effective date
18 of the administrative revocation;

19 (2) Demonstrate that the ground or grounds for revocation have
20 been eliminated;

21 (3) Demonstrate that the corporation's name satisfies the
22 requirements of section one thousand five hundred six, article
23 fifteen of this chapter; and

24 (4) Obtain a certificate from the Tax Commissioner reciting
25 that all taxes owed by the corporation have been paid.

1 (b) If the Secretary of State determines that the application
2 contains the information required by subsection (a) of this section
3 and that the information is accurate, the Secretary of State shall
4 cancel the Certificate of Revocation and prepare a Certificate of
5 Reinstatement that recites the Secretary of State's determination
6 and the effective date of reinstatement. The Secretary of State
7 shall send notice of the reinstatement to the corporation within
8 thirty days of the determination.

9 (c) When a reinstatement is granted, the reinstatement relates
10 back to and takes effect as of the effective date of the
11 administrative revocation and the corporation resumes its business
12 as if the administrative revocation had never occurred.

13 **§31D-15-1533. Appeal from denial of reinstatement.**

14 (a) If the Secretary of State denies a corporation's
15 application for reinstatement following administrative revocation,
16 the Secretary of State shall notify the corporation within thirty
17 days of application by written notice that explains the reason or
18 reasons for denial.

19 (b) The corporation may appeal the denial of reinstatement to
20 the circuit court of Kanawha County within thirty days after
21 service of the notice of denial.

22 (c) The corporation may appeal by petitioning the circuit
23 court of Kanawha County to set aside the revocation and attaching
24 to the petition copies of the Secretary of State's Certificate of
25 Revocation, the corporation's application for reinstatement and the
26 Secretary of State's notice of denial.

1 (d) The circuit court's final decision may be appealed to the
2 West Virginia Supreme Court of Appeals in accordance with article
3 six, chapter twenty-nine-a of this code.

4 **CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.**

5 **ARTICLE 14. FOREIGN CORPORATIONS.**

6 **§31E-14-1432.. Reinstatement following administrative revocation.**

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8 (a) A corporation that has had its certificate of
9 authority administratively revoked under section one thousand four
10 hundred thirty-one of this article may apply to the Secretary of
11 State for reinstatement within two years after the effective date
12 of revocation. The application must:

13 (1) Recite the name of the corporation and the effective date
14 of the administrative revocation;

15 (2) Demonstrate that the ground or grounds for revocation have
16 been eliminated;

17 (3) Demonstrate that the corporation's name satisfies the
18 requirements of section one thousand four hundred six, article
19 fifteen of this chapter; and

20 (4) Obtain a certificate from the Tax Commissioner reciting
21 that all taxes owed by the corporation have been paid.

22 (b) If the Secretary of State determines that the application
23 contains the information required by subsection (a) of this section
24 and that the information is accurate, the Secretary of State shall
25 cancel the Certificate of Revocation and prepare a Certificate of

1 Reinstatement that recites the Secretary of State's determination
2 and the effective date of reinstatement. The Secretary of State
3 shall send notice of the reinstatement to the corporation within
4 thirty days of the determination.

5 (c) When a reinstatement is granted, the reinstatement relates
6 back to and takes effect as of the effective date of the
7 administrative revocation and the corporation resumes its business
8 as if the administrative revocation had never occurred.

9 **§31E-14-1533. Appeal from denial of reinstatement.**

10 (a) If the Secretary of State denies a corporation's
11 application for reinstatement following administrative revocation,
12 the Secretary of State shall notify the corporation within thirty
13 days of application by written notice that explains the reason or
14 reasons for denial.

15 (b) The corporation may appeal the denial of reinstatement to
16 the circuit court of Kanawha County within thirty days after
17 service of the notice of denial.

18 (c) The corporation may appeal by petitioning the circuit
19 court of Kanawha County to set aside the revocation and attaching
20 to the petition copies of the Secretary of State's Certificate of
21 Revocation, the corporation's application for reinstatement and the
22 Secretary of State's notice of denial.

23 (d) The circuit court's final decision may be appealed to the
24 West Virginia Supreme Court of Appeals in accordance with article
25 six, chapter ~~CHAPTER 59~~ **FEEs, ALLOWANCES AND COSTS;**

1 **NEWSPAPERS; LEGAL ADVERTISEMENTS.ARTICLE 1. FEES AND**

2 **ALLOWANCES.§59-1-2. Fees to be charged by Secretary of State.**

3 (a) Except as may be otherwise provided in this code, the
4 Secretary of State shall charge for services rendered in his or her
5 office the following fees to be paid by the person to whom the
6 service is rendered at the time it is done:

7 (1) For filing, recording, indexing, preserving a record of
8 and issuing a certificate relating to the formation, amendment,
9 change of name, registration of trade name, merger, consolidation,
10 conversion, renewal, dissolution, termination, cancellation,
11 withdrawal revocation and reinstatement of business entities
12 organized within the state, as follows:

13 (A) Articles of incorporation of for-profit corporation, \$50;

14 (B) Articles of incorporation of nonprofit corporation, \$25;

15 (C) Articles of organization of limited liability company,
16 \$100;

17 (D) Agreement of a general partnership, \$50;

18 (E) Certificate of a limited partnership, \$100;

19 (F) Agreement of a voluntary association, \$50;

20 (G) Articles of organization of a business trust, \$50;

21 (H) Amendment or correction of articles of incorporation,
22 including change of name or increase of capital stock, in addition
23 to any applicable license tax, \$25;

24 (I) Amendment or correction, including change of name, of
25 articles of organization of business trust, limited liability

1 partnership, limited liability company or professional limited
2 liability company or of certificate of limited partnership or
3 agreement of voluntary association, \$25;

4 (J) Amendment and restatement of articles of incorporation,
5 certificate of limited partnership, agreement of voluntary
6 association or articles of organization of limited liability
7 partnership, limited liability company or professional limited
8 liability company or business trust, \$25;

9 (K) Registration of trade name, otherwise designated as a true
10 name, fictitious name or D.B.A. (doing business as) name for any
11 domestic business entity as permitted by law, \$25;

12 (L) Articles of merger of two corporations, limited
13 partnerships, limited liability partnerships, limited liability
14 companies or professional limited liability companies, voluntary
15 associations or business trusts, \$25, and for each additional party
16 to the merger in excess of two, \$5;

17 (M) Statement of conversion, when permitted, from one
18 business entity into another business entity, in addition to the
19 cost of filing the appropriate documents to organize the surviving
20 entity, \$25;

21 (N) Articles of dissolution of a corporation, voluntary
22 association or business trust or statement of dissolution of a
23 general partnership, \$25;

24 (O) Revocation of voluntary dissolution of a corporation,
25 voluntary association or business trust, \$15;

26 (P) Articles of termination of a limited liability company,

1 cancellation of a limited partnership or statement of withdrawal of
2 limited liability partnership, \$25; and

3 (Q) Reinstatement of a domestic or foreign limited liability
4 company, a professional limited liability company or a domestic or
5 foreign corporation after administrative dissolution or revocation,
6 \$25.

7 (2) For filing, recording, indexing, preserving a record of
8 and issuing a certificate relating to the registration, amendment,
9 change of name, merger, consolidation, conversion, renewal,
10 withdrawal or termination within this state of business entities
11 organized in other states or countries, as follows:

12 (A) Certificate of authority of for-profit corporation, \$100;

13 (B) Certificate of authority of nonprofit corporation, \$50;

14 (C) Certificate of authority of foreign limited liability
15 companies, \$150;

16 (D) Certificate of exemption from certificate of authority,
17 \$25;

18 (E) Registration of a general partnership, \$50;

19 (F) Registration of a limited partnership, \$150;

20 (G) Registration of a limited liability partnership for two-
21 year term, \$500;

22 (H) Registration of a voluntary association, \$50;

23 (I) Registration of a trust or business trust, \$50;

24 (J) Amendment or correction of certificate of authority of a
25 foreign corporation, including change of name or increase of
26 capital stock, in addition to any applicable license tax, \$25;

1 (K) Amendment or correction of certificate of limited
2 partnership, limited liability partnership, limited liability
3 company or professional limited liability company, voluntary
4 association or business trust, \$25;

5 (L) Registration of trade name, otherwise designated as a true
6 name, fictitious name or D.B.A. (doing business as) name for any
7 foreign business entity as permitted by law, \$25;

8 (M) Amendment and restatement of certificate of authority or
9 of registration of a corporation, limited partnership, limited
10 liability partnership, limited liability company or professional
11 limited liability company, voluntary association or business trust,
12 \$25;

13 (N) Articles of merger of two corporations, limited
14 partnerships, limited liability partnerships, limited liability
15 companies or professional limited liability companies, voluntary
16 associations or business trusts, \$25, and for each addition party
17 to the merger in excess of two, \$5;

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19 (O) Statement of conversion, when permitted, from one business
20 entity into another business entity, in addition to the cost of
21 filing the appropriate articles or certificate to organize the
22 surviving entity, \$25; and

23 (P) Certificate of withdrawal or cancellation of a
24 corporation, limited partnership, limited liability partnership,
25 limited liability company, voluntary association or business trust,
26 \$25.

1 Notwithstanding any other provision of this section to the
2 contrary, after June 13, 2008, the fees described in this
3 subdivision that are collected for the issuance of a certificate
4 relating to the initial registration of a corporation, limited
5 partnership, domestic limited liability company or foreign limited
6 liability company shall be deposited in the general administrative
7 fees account established by this section.

8 (3) For receiving, filing and recording a change of the
9 principal or designated office, change of the agent of process
10 and/or change of officers, directors, partners, members or
11 managers, as the case may be, of a corporation, limited
12 partnership, limited liability partnership, limited liability
13 company or other business entity as provided by law, \$15.

14 (4) For receiving, filing and preserving a reservation of a
15 name for each one hundred twenty days or for any other period in
16 excess of seven days prescribed by law for a corporation, limited
17 partnership, limited liability partnership or limited liability
18 company, \$15.

19 (5) For issuing a certificate relating to a corporation or
20 other business entity, as follows:

21 (A) Certificate of good standing of a domestic or foreign
22 corporation, \$10;

23 (B) Certificate of existence of a domestic limited liability
24 company, and certificate of authorization foreign limited liability
25 company, \$10;

26 (C) Certificate of existence of any business entity, trademark

1 or service mark registered with the Secretary of State, \$10;

2 (D) Certified copy of corporate charter or comparable
3 organizing documents for other business entities, \$15;

4 (E) Plus, for each additional amendment, restatement or other
5 additional document, \$5;

6 (F) Certificate of registration of the name of a foreign
7 corporation, limited liability company, limited partnership or
8 limited liability partnership, \$25;

9 (G) For the annual renewal of the name registration, \$10; and

10 (H) Any other certificate not specified in this subdivision,
11 \$10.

12 (6) For issuing a certificate other than those relating to
13 business entities, as provided in this subsection, as follows:

14 (A) Certificate or apostille relating to the authority of
15 certain public officers, including the membership of boards and
16 commissions, \$10;

17 (B) For each additional certificate pertaining to the same
18 transaction, \$5;

19 (C) Any other certificate not specified in this subdivision,
20 \$10;

21 (D) For acceptance, indexing and recordation of service of
22 process any corporation, limited partnership, limited liability
23 partnership, limited liability company, voluntary association,
24 business trust, insurance company, person or other entity as
25 permitted by law, \$15;

26 (E) For shipping and handling expenses for execution of

1 service of process by certified mail upon any defendant within the
2 United States, which fee is to be deposited to the special revenue
3 account established in this section for the operation of the office
4 of the Secretary of State, \$5; and

5 (F) For shipping and handling expenses for execution of
6 service of process upon any defendant outside the United States by
7 registered mail, which fee is to be deposited to the special
8 revenue account established in this section for the operation of
9 the office of the Secretary of State, \$15.

10 (7) For a search of records of the office conducted by
11 employees of or at the expense of the Secretary of State upon
12 request, as follows:

13 (A) For any search of archival records maintained at sites
14 other than the office of the Secretary of State, no less than \$10;

15 (B) For searches of archival records maintained at sites other
16 than the office of the Secretary of State which require more than
17 one hour, for each hour or fraction of an hour consumed in making
18 such search, \$10;

19 (C) For any search of records maintained on site for the
20 purpose of obtaining copies of documents or printouts of data, \$5;

21 (D) For any search of records maintained in electronic format
22 which requires special programming to be performed by the state
23 information services agency or other vendor any actual cost but not
24 less than, \$25, which cost is in addition to the cost of any copies
25 of printouts prepared or any certificate issued pursuant to or
26 based on the search; and

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2 (E) For recording any paper for which no specific fee is
3 prescribed, \$5.

4 (8) For producing and providing photocopies or printouts of
5 electronic data of specific records upon request, as follows:

6 (A) For a copy of any paper or printout of electronic data, if
7 one sheet, \$1;

8 (B) For each sheet after the first, \$.50;

9 (C) For sending the copies or lists by fax transmission, \$5;

10 (D) For producing and providing photocopies of lists, reports,
11 guidelines and other documents produced in multiple copies for
12 general public use, a publication price to be established by the
13 Secretary of State at a rate approximating \$2 plus \$.10 per page
14 and rounded to the nearest dollar; and

15 (E) For electronic copies of records obtained in data format
16 on disk, the cost of the record in the least expensive available
17 printed format, plus, for each required disk, which shall be
18 provided by the Secretary of State, \$5.

19 (b) The Secretary of State may propose legislative rules for
20 promulgation for charges for on-line electronic access to database
21 information or other information maintained by the Secretary of
22 State.

23 (c) For any other work or service not enumerated in this
24 subsection, the fee prescribed elsewhere in this code or a rule
25 promulgated under the authority of this code.

26 (d) The records maintained by the Secretary of State are

1 prepared and indexed at the expense of the state and those records
2 may not be obtained for commercial resale without the written
3 agreement of the state to a contract including reimbursement to the
4 state for each instance of resale.

5 (e) The Secretary of State may provide printed or electronic
6 information free of charge as he or she considers necessary and
7 efficient for the purpose of informing the general public or the
8 news media.

9 (f) There is hereby continued in the State Treasury a special
10 revenue account to be known as the "service fees and collections"
11 account. Expenditures from the account shall be used for the
12 operation of the office of the Secretary of State and are not
13 authorized from collections but are to be made only in accordance
14 with appropriation by the Legislature and in accordance with the
15 provisions of article three, chapter twelve of this code and upon
16 the fulfillment of the provisions set forth in article two, chapter
17 five-a of this code. Notwithstanding any other provision of this
18 code to the contrary, except as provided in subsection (h) of this
19 section and section two-a of this article, one half of all the fees
20 and service charges established in the following sections and for
21 the following purposes shall be deposited by the Secretary of State
22 or other collecting agency to that special revenue account and used
23 for the operation of the office of the Secretary of State:

24 (1) The annual attorney-in-fact fee for corporations and
25 limited partnerships established in section five, article twelve-c,
26 chapter eleven of this code;

1 (2) The fees received for the sale of the State Register, Code
2 of State Rules and other copies established by rule and authorized
3 by section seven, article two, chapter twenty-nine-a of this code;

4 (3) The registration fees, late fees and legal settlements
5 charged for registration and enforcement of the charitable
6 organizations and professional solicitations established in
7 sections five, nine and fifteen-b, article nineteen, chapter
8 twenty-nine of this code;

9 (4) The annual attorney-in-fact fee for limited liability
10 companies as designated in section one hundred eight, article one,
11 chapter thirty-one-b of this code and established in section two
12 hundred eleven, article two of said chapter. After June 30, 2008,
13 the annual report fees designated in section one hundred eight,
14 article one, chapter thirty-one-b of this code shall upon
15 collection be deposited in the general administrative fees account
16 described in subsection (h) of this section;

17 (5) The filing fees and search and copying fees for uniform
18 commercial code transactions established by section five hundred
19 twenty-five, article nine, chapter forty-six of this code;

20 (6) The annual attorney-in-fact fee for licensed insurers
21 established in section twelve, article four, chapter thirty-three
22 of this code;

23 (7) The fees for the application and record maintenance of all
24 notaries public established by section one hundred seven, article
25 one, chapter twenty-nine-c of this code;

26 (8) The fees for the application and record maintenance of

1 commissioners for West Virginia as established by section twelve,
2 article four, chapter twenty-nine of this code;

3 (9) The fees for registering credit service organizations as
4 established by section five, article six-c, chapter forty-six-a of
5 this code;

6 (10) The fees for registering and renewing a West Virginia
7 limited liability partnership as established by section one,
8 article ten, chapter forty-seven-b of this code;

9 (11) The filing fees for the registration and renewal of
10 trademarks and service marks established in section seventeen,
11 article two, chapter forty-seven of this code;

12 (12) All fees for services, the sale of photocopies and data
13 maintained at the expense of the Secretary of State as provided in
14 this section; and

15 (13) All registration, license and other fees collected by the
16 Secretary of State not specified in this section.

17 (g) Any balance in the service fees and collections account
18 established by this section which exceeds \$500,000 as of June 30,
19 2003, and each year thereafter, expires to the state fund, General
20 Revenue Fund.

21 (h) (1) Effective July 1, 2008, there is hereby created in the
22 State Treasury a special revenue account to be known as the general
23 administrative fees account. Expenditures from the account shall be
24 used for the operation of the Office of the Secretary of State and
25 are not authorized from collections but are to be made only in
26 accordance with appropriation by the Legislature and in accordance

1 with the provisions of article three, chapter twelve of this code
2 and upon the fulfillment of the provisions set forth in article
3 two, chapter eleven-b of this code. For the fiscal year ending June
4 30, 2009, expenditures are authorized from collections rather than
5 pursuant to an appropriation by the Legislature. Any balance in the
6 account at the end of each fiscal year shall not revert to the
7 General Revenue Fund but shall remain in the fund and be expended
8 as provided by this subsection.

9 (2) After June 30, 2008, all the fees and service charges
10 established in section two-a of this article for the following
11 purposes shall be collected and deposited by the Secretary of State
12 or other collecting agency in the general administrative fees
13 account and used for the operation of the Office of the Secretary
14 of State:

15 (A) The annual report fees paid to the Secretary of State by
16 corporations, limited partnerships, domestic limited liability
17 companies and foreign limited liability companies;

18 (B) The fees for the issuance of a certificate relating to the
19 initial registration of a corporation, limited partnership,
20 domestic limited liability company or foreign limited liability
21 company described in subdivision (2), subsection (a) of this
22 section; and

23 (C) The fees for the purchase of data and updates related to
24 the state's Business Organizations Database described in section
25 two-a of this article.

26 (i) There is continued in the office of the Secretary of State

1 a noninterest bearing, escrow account to be known as the "prepaid
2 fees and services account". This account is for the purpose of
3 allowing customers of the Secretary of State to prepay for
4 services, with payment to be held in escrow until services are
5 rendered. Payments deposited in the account shall remain in the
6 account until services are rendered by the Secretary of State and
7 at that time the fees will be reallocated to the appropriate
8 general or special revenue accounts. There shall be no fee charged
9 by the Secretary of State to the customer for the use of this
10 account and the customer may request the return of any moneys
11 maintained in the account at any time without penalty. The assets
12 of the prepaid fees and services account do not constitute public
13 funds of the state and are available solely for carrying out the
14 purposes of this section.