

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2554**

4  
5 (By Delegates Morgan, Stephens, Staggers, Hartman,  
6 Jones, Diserio and Lynch)

7 (Originating in the Committee on the Judiciary)

8 [March 6, 2013]

9  
10 A BILL to amend and reenact §31D-15-1532 of the Code of West  
11 Virginia, 1931, as amended; to amend said code by adding  
12 thereto a new section, designated §31D-15-1533; to amend and  
13 reenact §31E-14-1432 of said code; to amend said code by  
14 adding thereto a new section, designated §31E-14-1533; and to  
15 amend and reenact §59-1-2 of said code, all relating to  
16 providing a procedure for the Secretary of State to reinstate  
17 certificates of authority for foreign corporations;  
18 establishing a fee for reinstatement; and establishing a fee  
19 for parties to corporate mergers.

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

21 That §31D-15-1532 of the Code of West Virginia, 1931, as  
22 amended, be amended and reenacted; that said code be amended by  
23 adding thereto a new section, designated §31D-15-1533; that §31E-  
24 14-1432 of said code be amended and reenacted; that said code be  
25 amended by adding thereto a new section, designated §31E-14-1533;  
26 and that §59-1-2 of said code be amended and reenacted, all to

1 read as follows:

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

3 **ARTICLE 15. FOREIGN CORPORATIONS.**

4 **§31D-15-1532. Appeal from revocation. Reinstatement following**  
5 **administrative revocation.**

6 ~~(a) A foreign corporation may appeal the Secretary of State's~~  
7 ~~revocation of its certificate of authority to the circuit court~~  
8 ~~within thirty days after service of the certificate of revocation~~  
9 ~~is perfected pursuant to section one thousand five hundred ten of~~  
10 ~~this article. The foreign corporation appeals by petitioning the~~  
11 ~~circuit court to set aside the revocation and attaching to the~~  
12 ~~petition copies of its certificate of authority and the Secretary~~  
13 ~~of State's certificate of revocation.~~

14 ~~(b) The circuit court may summarily order the Secretary of~~  
15 ~~State to reinstate the certificate of authority or may take any~~  
16 ~~other action the circuit court considers appropriate. (c) The~~  
17 ~~circuit court's final decision may be appealed as in other civil~~  
18 ~~proceedings.~~

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

24 (1) Recite the name of the corporation and the effective date  
25 of the administrative revocation;

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

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

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

8 (b) If the Secretary of State determines that the application  
9 contains the information required by subsection (a) of this section  
10 and that the information is accurate, the Secretary of State shall  
11 cancel the Certificate of Revocation and prepare a Certificate of  
12 Reinstatement that recites the Secretary of State's determination  
13 and the effective date of reinstatement. The Secretary of State  
14 shall send notice of the reinstatement to the corporation within  
15 thirty days of the determination.

16 (c) When a reinstatement is granted, the reinstatement relates  
17 back to and takes effect as of the effective date of the  
18 administrative revocation and the corporation resumes its business  
19 as if the administrative revocation had never occurred.

20 **§31D-15-1533. Appeal from denial of reinstatement.**

21 (a) If the Secretary of State denies a corporation's  
22 application for reinstatement following administrative revocation,  
23 the Secretary of State shall notify the corporation within thirty  
24 days of application by written notice that explains the reason or  
25 reasons for denial.

26 (b) The corporation may appeal the denial of reinstatement to

1 the circuit court of Kanawha County within thirty days after  
2 service of the notice of denial.

3 (c) The corporation may appeal by petitioning the circuit  
4 court of Kanawha County to set aside the revocation and attaching  
5 to the petition copies of the Secretary of State's Certificate of  
6 Revocation, the corporation's application for reinstatement and the  
7 Secretary of State's notice of denial.

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

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

12 **ARTICLE 14. FOREIGN CORPORATIONS.**

13 **§31E-14-1432. ~~Appeal from revocation. Reinstatement following~~**  
14 **administrative revocation.**

15 ~~(a) A foreign corporation may appeal the Secretary of State's~~  
16 ~~revocation of its certificate of authority to the circuit court~~  
17 ~~within thirty days after service of the certificate of revocation~~  
18 ~~is perfected pursuant to section one thousand four hundred ten of~~  
19 ~~this article. The foreign corporation appeals by petitioning the~~  
20 ~~circuit court to set aside the revocation and attaching to the~~  
21 ~~petition copies of its certificate of authority and the Secretary~~  
22 ~~of State's certificate of revocation.~~

23 ~~(b) The circuit court may summarily order the Secretary of~~  
24 ~~State to reinstate the certificate of authority or may take any~~  
25 ~~other action the circuit court considers appropriate.~~

1 ~~(c) The circuit court's final decision may be appealed as in~~  
2 ~~other civil proceedings.~~

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

8 (1) Recite the name of the corporation and the effective date  
9 of the administrative revocation;

10 (2) Demonstrate that the ground or grounds for revocation have  
11 been eliminated;

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

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

17 (b) If the Secretary of State determines that the application  
18 contains the information required by subsection (a) of this section  
19 and that the information is accurate, the Secretary of State shall  
20 cancel the Certificate of Revocation and prepare a Certificate of  
21 Reinstatement that recites the Secretary of State's determination  
22 and the effective date of reinstatement. The Secretary of State  
23 shall send notice of the reinstatement to the corporation within  
24 thirty days of the determination.

25 (c) When a reinstatement is granted, the reinstatement relates  
26 back to and takes effect as of the effective date of the

1 administrative revocation and the corporation resumes its business  
2 as if the administrative revocation had never occurred.

3 **§31E-14-1533. Appeal from denial of reinstatement.**

4 (a) If the Secretary of State denies a corporation's  
5 application for reinstatement following administrative revocation,  
6 the Secretary of State shall notify the corporation within thirty  
7 days of application by written notice that explains the reason or  
8 reasons for denial.

9 (b) The corporation may appeal the denial of reinstatement to  
10 the circuit court of Kanawha County within thirty days after  
11 service of the notice of denial.

12 (c) The corporation may appeal by petitioning the circuit  
13 court of Kanawha County to set aside the revocation and attaching  
14 to the petition copies of the Secretary of State's Certificate of  
15 Revocation, the corporation's application for reinstatement and the  
16 Secretary of State's notice of denial.

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

20 **CHAPTER 59. FEES, ALLOWANCES AND COSTS;**

21 **NEWSPAPERS; LEGAL ADVERTISEMENTS.**

22 **ARTICLE 1. FEES AND ALLOWANCES.**

23 **§59-1-2. Fees to be charged by Secretary of State.**

24 (a) Except as may be otherwise provided in this code, the  
25 Secretary of State shall charge for services rendered in his or her

1 office the following fees to be paid by the person to whom the  
2 service is rendered at the time it is done:

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

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

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

11 (C) Articles of organization of limited liability company,  
12 \$100;

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

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

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

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

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

20 (I) Amendment or correction, including change of name, of  
21 articles of organization of business trust, limited liability  
22 partnership, limited liability company or professional limited  
23 liability company or of certificate of limited partnership or  
24 agreement of voluntary association, \$25;

25 (J) Amendment and restatement of articles of incorporation,  
26 certificate of limited partnership, agreement of voluntary

1 association or articles of organization of limited liability  
2 partnership, limited liability company or professional limited  
3 liability company or business trust, \$25;

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

7 (L) Articles of merger of two corporations, limited  
8 partnerships, limited liability partnerships, limited liability  
9 companies or professional limited liability companies, voluntary  
10 associations or business trusts, \$25, and for each additional party  
11 to the merger in excess of two, \$5;

12 ~~(M) Plus for each additional party to the merger in excess of~~  
13 ~~two: \$15.00~~

14 ~~(N)~~ (M) Statement of conversion, when permitted, from one  
15 business entity into another business entity, in addition to the  
16 cost of filing the appropriate documents to organize the surviving  
17 entity, \$25;

18 ~~(O)~~ (N) Articles of dissolution of a corporation, voluntary  
19 association or business trust or statement of dissolution of a  
20 general partnership, \$25;

21 ~~(P)~~ (O) Revocation of voluntary dissolution of a corporation,  
22 voluntary association or business trust, \$15;

23 ~~(Q)~~ (P) Articles of termination of a limited liability  
24 company, cancellation of a limited partnership or statement of  
25 withdrawal of limited liability partnership, \$25; and

26 ~~(R)~~ (Q) Reinstatement of a domestic or foreign limited



1 liability company, ~~or~~ a professional limited liability company or  
2 a domestic or foreign corporation after administrative dissolution  
3 or revocation, \$25.

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

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

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

11 (C) Certificate of authority of foreign limited liability  
12 companies, \$150;

13 (D) Certificate of exemption from certificate of authority,  
14 \$25;

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

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

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

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

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

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

24 (K) Amendment or correction of certificate of limited  
25 partnership, limited liability partnership, limited liability  
26 company or professional limited liability company, voluntary

1 association or business trust, \$25;

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

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

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

15 ~~(O) Plus for each additional party to the merger in excess of~~  
16 ~~two 5.00~~

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

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

25 Notwithstanding any other provision of this section to the  
26 contrary, after June 13, 2008, the fees described in this

1 subdivision that are collected for the issuance of a certificate  
2 relating to the initial registration of a corporation, limited  
3 partnership, domestic limited liability company or foreign limited  
4 liability company shall be deposited in the general administrative  
5 fees account established by this section.

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

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

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

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

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

24 (C) Certificate of existence of any business entity, trademark  
25 or service mark registered with the Secretary of State, \$10;

26 (D) Certified copy of corporate charter or comparable

1 organizing documents for other business entities, \$15;

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

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

7 (G) ~~And~~ For the annual renewal of the name registration, \$10;  
8 and

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

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

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

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

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

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

25 (E) For shipping and handling expenses for execution of  
26 service of process by certified mail upon any defendant within the

1 United States, which fee is to be deposited to the special revenue  
2 account established in this section for the operation of the office  
3 of the Secretary of State, \$5; and

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

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

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

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

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

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

26 ~~(E) The cost of the search is in addition to the cost of any~~

1 ~~copies or printouts prepared or any certificate issued pursuant to~~  
2 ~~or based on the search.~~

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

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

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

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

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

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

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

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

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

1 (d) The records maintained by the Secretary of State are  
2 prepared and indexed at the expense of the state and those records  
3 ~~shall~~ may not be obtained for commercial resale without the written  
4 agreement of the state to a contract including reimbursement to the  
5 state for each instance of resale.

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

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

25 (1) The annual attorney-in-fact fee for corporations and  
26 limited partnerships established in section five, article twelve-c,

1 chapter eleven of this code;

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

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

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

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

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

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



1 (8) The fees for the application and record maintenance of  
2 commissioners for West Virginia as established by section twelve,  
3 article four, chapter twenty-nine of this code;

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

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

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

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

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

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

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

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

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

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

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

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

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