

Senate Bill No. 559

(By Senators Edgell, Fitzsimmons, Cookman, Wells,
Miller, Walters, Plymale and Yost)

[Introduced February 12, 2014; referred to the Committee on
Government Organization.]

A BILL to amend and reenact §59-1-2a of the Code of West Virginia, 1931, as amended, relating to eliminating late fees charged by the Secretary of State; and eliminating fees charged to domestic corporations, foreign corporations, domestic limited liability companies and foreign limited liability companies for the late filing of annual reports.

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” means the report described in
3 subsection (d) of this section that is to be filed with the
4 Secretary of State each year by each corporation, limited
5 partnership, domestic limited liability company and foreign
6 limited liability company engaged in or authorized to do
7 business in this state.

8 (1) ~~(2)~~ “Annual report fee” means the fee described in
9 subsection (c) of this section that is to be paid to the Secretary of
10 State each year by corporations, limited partnerships, domestic
11 limited liability companies and foreign limited liability
12 companies. ~~After June 30, 2008, any reference in this code to~~
13 ~~a fee paid to the Secretary of State for services as a statutory~~
14 ~~attorney in fact shall mean the annual report fee described in this~~
15 ~~section.~~

16 ~~(2)~~ (3) “Business activity” means all activities engaged in or
17 caused to be engaged in with the object of gain or economic
18 benefit, direct or indirect, but does not mean any of the activities
19 of foreign corporations enumerated in subsection (b), section

20 one thousand five hundred one, article fifteen, chapter
21 thirty-one-d of this code, except for the activity of conducting
22 affairs in interstate commerce when activity occurs in this state,
23 nor does it mean any of the activities of foreign limited liability
24 companies enumerated in subsection (a), section one thousand
25 three, article ten, chapter thirty-one-b of this code except for the
26 activity of conducting affairs in interstate commerce when
27 activity occurs in this state.

28 ~~(3)~~ (4) “Corporation” means a “domestic corporation”, a
29 “foreign corporation” or a “nonprofit corporation”.

30 ~~(4)~~ (5) “Deliver or delivery” means any method of delivery
31 used in conventional commercial practice, including, but not
32 limited to, delivery by hand, mail, commercial delivery and
33 electronic transmission.

34 ~~(5)~~ (6) “Domestic corporation” means a corporation for
35 profit which is not a foreign corporation incorporated under or
36 subject to chapter thirty-one-d of this code.

37 ~~(6)~~ (7) “Domestic limited liability company” means a
38 limited liability company which is not a foreign limited

39 liability company under or subject to chapter thirty-one-b of
40 this code.

41 ~~(7)~~ (8) “Foreign corporation” means a for-profit
42 corporation incorporated under a law other than the laws of
43 this state.

44 ~~(8)~~ (9) “Foreign limited liability company” means a
45 limited liability company organized under a law other than
46 the laws of this state.

47 ~~(9)~~ (10) “Limited partnership” means a partnership as
48 defined by section one, article nine, chapter forty-seven of
49 this code.

50 ~~(10)~~ (11) “Nonprofit corporation” means a nonprofit
51 corporation as defined by section one hundred fifty, article
52 one, chapter thirty-one-e of this code.

53 ~~(11)~~ (12) “Registration fee” means the fee for the
54 issuance of a certificate relating to the initial registration of
55 a corporation, limited partnership, domestic limited liability
56 company or foreign limited liability company described in
57 subdivision (2), subsection (a), section two of this article.

58 The term “initial registration” also means the date upon
59 which the registration fee is paid.

60 (b) *Required payment of annual report fee and filing of*
61 *annual report.* – ~~After June 30, 2008,~~ No corporation, limited
62 partnership, domestic limited liability company or foreign
63 limited liability company may engage in any business activity
64 in this state without paying the annual report fee and filing
65 the annual report as required by this section.

66 (c) *Annual report fee.* – ~~After June 30, 2008,~~ Each
67 corporation, limited partnership, domestic limited liability
68 company and foreign limited liability company engaged in or
69 authorized to do business in this state shall pay an annual
70 report fee of \$25 for the services of the Secretary of State as
71 attorney-in-fact for the corporation, limited partnership,
72 domestic limited liability company or foreign limited liability
73 company, and for such other administrative services as may
74 be imposed by law upon the Secretary of State. The fee is
75 due and payable each year after the initial registration of the
76 corporation, limited partnership, domestic limited liability

77 company or foreign limited liability company with the annual
78 report described in subsection (d) of this section ~~on or before the~~
79 ~~dates specified in subsection (e) of this section. The fee is due~~
80 ~~and payable each year with the annual report from corporations,~~
81 ~~limited partnerships, domestic limited liability companies and~~
82 ~~foreign limited liability companies that paid the registration fee~~
83 ~~prior to July 1, 2008, on or before the dates specified in~~
84 ~~subsection (e) of this section. before July 1 of each year. The~~
85 annual report fees received by the Secretary of State pursuant to
86 this subsection shall be deposited by the Secretary of State in the
87 general administrative fees account established by section two
88 of this article.

89 (d) *Annual report.* – ~~(1) After June 30, 2008, each~~
90 ~~corporation, limited partnership, domestic limited liability~~
91 ~~company and foreign limited liability company engaged in or~~
92 ~~authorized to do business in this state shall file an annual~~
93 ~~report. The report is due each year after the initial~~
94 ~~registration of the corporation, limited partnership, domestic~~
95 ~~limited liability company or foreign limited liability company~~

96 ~~with the annual report fee described in subsection (c) of this~~
97 ~~section on or before the dates specified in subsection (e) of~~
98 ~~this section. The report is due each year from corporations,~~
99 ~~limited partnerships, domestic limited liability companies and~~
100 ~~foreign limited liability companies that paid the registration~~
101 ~~fee prior to July 1, 2008, on or before the dates specified in~~
102 ~~subsection (e) of this section.~~

103 ~~(2)~~ (A) (1) The annual report shall be filed with the
104 Secretary of State on forms provided by the Secretary of
105 State for that purpose. The annual report shall, in the case of
106 corporations, contain:

107 ~~(i)~~ (A) The address of the corporation's principal office;

108 ~~(ii)~~ (B) The names and mailing addresses of its officers
109 and directors;

110 ~~(iii)~~ (C) The name and mailing address of the person on
111 whom notice of process may be served;

112 ~~(iv)~~ (D) The name and address of the corporation's parent
113 corporation and of each subsidiary of the corporation
114 licensed to do business in this state;

115 ~~(v)~~ (E) In the case of limited partnerships domestic
116 limited liability companies and foreign limited liability
117 companies, similar information with respect to their principal
118 or controlling interests as determined by the Secretary of
119 State or otherwise required by law to be reported to the
120 Secretary of State;

121 ~~(vi)~~ (F) The county or county code in which the principal
122 office address or mailing address of the company is located;

123 ~~(vii)~~ (G) Business class code; and

124 ~~(viii)~~ (H) Any other information the Secretary of State
125 considers appropriate.

126 ~~(B)~~ (2) Notwithstanding any other provision of law to the
127 contrary, the Secretary of State shall, upon request of any
128 person, disclose, with respect to corporations, ~~(i) The address~~
129 ~~of the corporation's principal office; (ii) the names and~~
130 ~~addresses of its officers and directors; (iii) the name and~~
131 ~~mailing address of the person on whom notice of process may~~
132 ~~be served; (iv) the name and address of each subsidiary of the~~
133 ~~corporation and the corporation's parent corporation; (v) the~~

134 ~~county or county code in which the principal office address~~
135 ~~or mailing address of the company is located; and (vi) the~~
136 ~~business class code. The Secretary of State shall provide~~
137 ~~similar information with respect to information in its~~
138 ~~possession relating to limited partnerships domestic limited~~
139 ~~liability companies and foreign limited liability companies;~~
140 ~~similar information with respect to their principal or~~
141 ~~controlling interests. the information required by clauses (A)~~
142 ~~through (G) of subdivision (1) of this subsection.~~

143 ~~(e) *Annual reports and fees due July 1.* – Each domestic~~
144 ~~and foreign corporation, limited partnership, limited liability~~
145 ~~company and foreign limited liability company shall file with~~
146 ~~the Secretary of State the annual report and pay the annual~~
147 ~~report fee by July 1 of each year.~~

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

153 ~~(g) (1) Duty to pay. – It shall be the duty of each~~
154 ~~corporation, limited partnership, limited liability company~~
155 ~~and foreign limited liability company required to pay the~~
156 ~~annual report fees imposed under this article, to remit them~~
157 ~~with a properly completed annual report to the Secretary of~~
158 ~~State, and if it fails to do so it shall be subject to the late fees~~
159 ~~prescribed in subsection (h) of this article and dissolution or~~
160 ~~revocation, pursuant to this code. *Provided*, That before~~
161 ~~dissolution or revocation for failure to pay fees may occur,~~
162 ~~the Secretary of State shall notify the entity by certified mail,~~
163 ~~return receipt requested, of its failure to pay, all late fees or~~
164 ~~bad check fees associated with the failure to pay and the date~~
165 ~~upon which dissolution or revocation will occur if all fees are~~
166 ~~not paid in full. The certified mail required by this~~
167 ~~subdivision shall be postmarked at least thirty days before the~~
168 ~~dissolution or revocation date listed in the notice.~~

169 ~~(2) *Bad check fee.* – If any corporation, limited~~
170 ~~partnership, limited liability company or foreign limited~~
171 ~~liability company submits payment by check or money order~~

172 ~~for the annual report fee imposed under this article and the~~
173 ~~check or money order is rejected because there are insufficient~~
174 ~~funds in the account or the account is closed, the Secretary of~~
175 ~~State shall assess a bad check fee to the corporation, limited~~
176 ~~partnership, limited liability company or foreign limited liability~~
177 ~~company that is equivalent to the service charge paid by the~~
178 ~~Secretary of State due to the rejected check or money order.~~
179 ~~The bad check fee assessed under this subdivision shall be~~
180 ~~deposited into the account or accounts from which the Secretary~~
181 ~~of State paid the service charge.~~

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

185 ~~(A) *Administrative late fee.* = The Secretary of State shall~~
186 ~~assess upon each corporation, limited partnership, limited~~
187 ~~liability company and foreign limited liability company~~
188 ~~delinquent in the payment of an annual report fee or the filing~~
189 ~~of an annual report an administrative late fee in the amount~~
190 ~~of \$50.~~

191 ~~(B) Administrative late fees for nonprofit corporations. –~~
192 ~~The Secretary of State shall assess each nonprofit corporation~~
193 ~~delinquent in the payment of an annual report fee or the filing~~
194 ~~of an annual report an administrative late fee in the amount~~
195 ~~of \$25.~~

196 ~~(2) The Secretary of State shall deposit the first \$25,000~~
197 ~~of fees collected under this subsection into the general~~
198 ~~administrative fees account established in subsection (h),~~
199 ~~section two of this article, and shall deposit any additional~~
200 ~~fees collected under this section into the General Revenue~~
201 ~~Fund of the state.~~

202 ~~(i) (e) Reports to Tax Commissioner; suspension,~~
203 ~~cancellation or withholding of business registration~~
204 ~~certificate. –~~

205 (1) The Secretary of State shall, within twenty days after
206 the close of each month, make a report to the Tax
207 Commissioner for the preceding month, in which he or she
208 shall set out the name of every business entity to which he or
209 she issued a certificate to conduct business in the State of

210 West Virginia during that month. The report shall set out the
211 names and addresses all corporations, limited partnerships,
212 limited liability companies and foreign limited liability
213 companies to which he or she issued certificates of change of
214 name or of change of location of principal office, dissolution,
215 withdrawal or merger. If the Secretary of State fails to make
216 the report, it shall be the duty of the Tax Commissioner to
217 report such failure to the Governor. A writ of mandamus
218 shall lie for correction of such failure.

219 (2) Notwithstanding any other provisions of this code to
220 the contrary, upon receipt of notice from the Secretary of
221 State that a corporation, limited partnership, limited liability
222 company and foreign limited liability company is more than
223 thirty days delinquent in the payment of annual report fees or
224 in the filing of an annual report required by this section, the
225 Tax Commissioner may suspend, cancel or withhold a
226 business registration certificate issued to or applied for by the
227 delinquent corporation, limited partnership, limited liability
228 company or foreign limited liability company until the same

229 is paid and filed in the manner provided for the suspension,
230 cancellation or withholding of business registration
231 certificates for other reasons under article twelve, chapter
232 eleven of this code.

233 (j) (f) *Purchase of data.* – The Secretary of State will
234 provide electronically, for purchase, any data maintained in
235 the Secretary of State’s Business Organizations Database.
236 For the electronic purchase of the entire Business
237 Organizations Database, the cost is \$12,000. For the
238 purchase of the monthly updates of the Business
239 Organizations Database, the cost is \$1,000 per month. The
240 fees received by the Secretary of State pursuant to this
241 subsection shall be deposited by the Secretary of State in the
242 general administrative fees account established by section
243 two, article one, chapter fifty-nine of this code.

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

248 (†) (h) *Rules.* – The Secretary of State may propose
249 legislative rules for ~~promulgation~~ legislative approval
250 pursuant to article three, chapter twenty-nine-a of this code
251 to implement this article, and may, pending ~~promulgation~~
252 approval of those rules, promulgate emergency rules pursuant
253 to ~~those provisions for those purposes.~~ section fifteen, article
254 three, chapter twenty-nine-a of this code.

(NOTE: The purpose of this bill is to eliminate the annual report late fee for domestic corporations, foreign corporations, domestic limited liability companies, and foreign limited liability companies.

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