

H. B. 2839

(By Delegates Morgan, Walters, Arvon, Zatezalo, Border and Howell)

[Introduced February 20, 2015; 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; 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.

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

(1) "Annual report fee" means the fee described in subsection (c) of this section that is to be paid to the Secretary of State each year by corporations, limited partnerships, domestic limited

1 liability companies and foreign limited liability companies. After June 30, 2008, any reference in
2 this code to a fee paid to the Secretary of State for services as a statutory attorney in fact shall mean
3 the annual report fee described in this section.

4 (2) "Business activity" means all activities engaged in or caused to be engaged in with the
5 object of gain or economic benefit, direct or indirect, but does not mean any of the activities of
6 foreign corporations enumerated in subsection (b), section one thousand five hundred one, article
7 fifteen, chapter thirty-one-d of this code, except for the activity of conducting affairs in interstate
8 commerce when activity occurs in this state, nor does it mean any of the activities of foreign limited
9 liability companies enumerated in subsection (a), section one thousand three, article ten, chapter
10 thirty-one-b of this code except for the activity of conducting affairs in interstate commerce when
11 activity occurs in this state.

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

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

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

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

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

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

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

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

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

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

15 (c) *Annual report fee.* -- After June 30, 2008, each corporation, limited partnership, domestic
16 limited liability company and foreign limited liability company engaged in or authorized to do
17 business in this state shall pay an annual report fee of \$25 for the services of the Secretary of State
18 as attorney-in-fact for the corporation, limited partnership, domestic limited liability company or
19 foreign limited liability company, and for such other administrative services as may be imposed by
20 law upon the Secretary of State. The fee is due and payable each year after the initial registration
21 of the corporation, limited partnership, domestic limited liability company or foreign limited liability
22 company with the annual report described in subsection (d) of this section on or before the dates

1 specified in subsection (e) of this section. The fee is due and payable each year with the annual
2 report from corporations, limited partnerships, domestic limited liability companies and foreign
3 limited liability companies that paid the registration fee prior to July 1, 2008, on or before the dates
4 specified in subsection (e) of this section. The annual report fees received by the Secretary of State
5 pursuant to this subsection shall be deposited by the Secretary of State in the general administrative
6 fees account established by section two of this article.

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

16 (2) (A) The annual report shall be filed with the Secretary of State on forms provided by the
17 Secretary of State for that purpose. The annual report shall, in the case of corporations, contain: (i)
18 The address of the corporation's principal office; (ii) the names and mailing addresses of its officers
19 and directors; (iii) the name and mailing address of the person on whom notice of process may be
20 served; (iv) the name and address of the corporation's parent corporation and of each subsidiary of
21 the corporation licensed to do business in this state; (v) in the case of limited partnerships domestic
22 limited liability companies and foreign limited liability companies, similar information with respect

1 to their principal or controlling interests as determined by the Secretary of State or otherwise
 2 required by law to be reported to the Secretary of State; (vi) the county or county code in which the
 3 principal office address or mailing address of the company is located; (vii) business class code; and
 4 (viii) any other information the Secretary of State considers appropriate.

5 (B) Notwithstanding any other provision of law to the contrary, the Secretary of State shall,
 6 upon request of any person, disclose, with respect to corporations: ~~(i) The address of the~~
 7 ~~corporation's principal office; (ii) the names and addresses of its officers and directors; (iii) the name~~
 8 ~~and mailing address of the person on whom notice of process may be served; (iv) the name and~~
 9 ~~address of each subsidiary of the corporation and the corporation's parent corporation; (v) the county~~
 10 ~~or county code in which the principal office address or mailing address of the company is located;~~
 11 ~~and (vi) the business class code. The Secretary of State shall provide similar information with~~
 12 ~~respect to information in its possession relating to limited partnerships domestic limited liability~~
 13 ~~companies and foreign limited liability companies, similar information with respect to their principal~~
 14 ~~or controlling interests. the information required by subparagraph (i) through (vii), paragraph (A),~~
 15 subdivision (2) of this subsection.

16 (e) *Annual reports and fees due July 1.* -- Each domestic and foreign corporation, limited
 17 partnership, limited liability company and foreign limited liability company shall file with the
 18 Secretary of State the annual report and pay the annual report fee by July 1 of each year.

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

22 (g) (1) *Duty to pay.* -- It shall be the duty of each corporation, limited partnership, limited

1 liability company and foreign limited liability company required to pay the annual report fees
2 imposed under this article, to remit them with a properly completed annual report to the Secretary
3 of State, and if it fails to do so it shall be subject to the late fees prescribed in subsection (h) of this
4 article and dissolution or revocation, pursuant to this code: *Provided*, That before dissolution or
5 revocation for failure to pay fees may occur, the Secretary of State shall notify the entity by certified
6 mail, return receipt requested, of its failure to pay, all late fees or bad check fees associated with the
7 failure to pay and the date upon which dissolution or revocation will occur if all fees are not paid in
8 full. The certified mail required by this subdivision shall be postmarked at least thirty days before
9 the dissolution or revocation date listed in the notice.

10 (2) *Bad check fee.* -- If any corporation, limited partnership, limited liability company or
11 foreign limited liability company submits payment by check or money order for the annual report
12 fee imposed under this article and the check or money order is rejected because there are insufficient
13 funds in the account or the account is closed, the Secretary of State shall assess a bad check fee to
14 the corporation, limited partnership, limited liability company or foreign limited liability company
15 that is equivalent to the service charge paid by the Secretary of State due to the rejected check or
16 money order. The bad check fee assessed under this subdivision shall be deposited into the account
17 or accounts from which the Secretary of State paid the service charge.

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

20 ~~(A) *Administrative late fee.* -- The Secretary of State shall assess upon each corporation,~~
21 ~~limited partnership, limited liability company and foreign limited liability company delinquent in~~
22 ~~the payment of an annual report fee or the filing of an annual report an administrative late fee in the~~

1 ~~amount of \$50.~~

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

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

9 ~~(i) (h) *Reports to Tax Commissioner; suspension, cancellation or withholding of business*~~
10 ~~*registration certificate.* --~~

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

20 (2) Notwithstanding any other provisions of this code to the contrary, upon receipt of notice
21 from the Secretary of State that a corporation, limited partnership, limited liability company and
22 foreign limited liability company is more than thirty days delinquent in the payment of annual report

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

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

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

16 (†) (k) *Rules.* -- The Secretary of State may propose legislative rules for ~~promulgation~~
 17 legislative approval pursuant to article three, chapter twenty-nine-a of this code to implement this
 18 article, and may, pending ~~promulgation~~ approval of those rules, promulgate emergency rules
 19 pursuant to ~~those provisions for those purposes:~~ section fifteen, article three, chapter twenty-nine-a
 20 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.