

**H. B. 2682**

(By Delegates Hamilton, Longstreth, Ferro and Guthrie)

[By Request of the Secretary of State]

[Introduced February 10, 2015; referred to the

Committee on the Judiciary then Finance.]

A BILL to amend and reenact §59-1-2 of the Code of West Virginia, 1931, as amended, relating to donations of overpayment of fees to the Secretary of State.

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

That §59-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. FEES AND ALLOWANCES.**

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

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

(1) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the formation, amendment, change of name, registration of trade name, merger, consolidation, conversion, renewal, dissolution, termination, cancellation, withdrawal revocation and reinstatement

1 of business entities organized within the state, as follows:

- 2 (A) Articles of incorporation of for-profit corporation. . . . . \$50.00
- 3 (B) Articles of incorporation of nonprofit corporation. . . . . 25.00
- 4 (C) Articles of organization of limited liability company. . . . . 100.00
- 5 (D) Agreement of a general partnership.. . . . 50.00
- 6 (E) Certificate of a limited partnership. . . . . 100.00
- 7 (F) Agreement of a voluntary association. . . . . 50.00
- 8 (G) Articles of organization of a business trust. . . . . 50.00
- 9 (H) Amendment or correction of articles of incorporation, including change of name or  
10 increase of capital stock, in addition to any applicable license tax. . . . . 25.00
- 11 (I) Amendment or correction, including change of name, of articles of organization of  
12 business trust, limited liability partnership, limited liability company or professional limited liability  
13 company or of certificate of limited partnership or agreement of voluntary association.. . . . 25.00
- 14 (J) Amendment and restatement of articles of incorporation, certificate of limited partnership,  
15 agreement of voluntary association or articles of organization of limited liability partnership, limited  
16 liability company or professional limited liability company or business trust.. . . . 25.00
- 17 (K) Registration of trade name, otherwise designated as a true name, fictitious name or  
18 D.B.A. (doing business as) name for any domestic business entity as permitted by law. . . . 25.00
- 19 (L) Articles of merger of two corporations, limited partnerships, limited liability partnerships,  
20 limited liability companies or professional limited liability companies, voluntary associations or  
21 business trusts. . . . . 25.00
- 22 (M) Plus for each additional party to the merger in excess of two. . . . . 15.00

1 (N) Statement of conversion, when permitted, from one business entity into another business  
2 entity, in addition to the cost of filing the appropriate documents to organize the surviving entity..  
3 ..... 25.00

4 (O) Articles of dissolution of a corporation, voluntary association or business trust, or  
5 statement of dissolution of a general partnership.. ..... 25.00

6 (P) Revocation of voluntary dissolution of a corporation, voluntary association or business  
7 trust. .... 15.00

8 (Q) Articles of termination of a limited liability company, cancellation of a limited  
9 partnership or statement of withdrawal of limited liability partnership.. ..... 25.00

10 (R) Reinstatement of a limited liability company or professional limited liability company  
11 after administrative dissolution. .... 25.00

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

16 (A) Certificate of authority of for-profit corporation..... \$100.00

17 (B) Certificate of authority of nonprofit corporation . .... 50.00

18 (C) Certificate of authority of foreign limited liability companies. .... 150.00

19 (D) Certificate of exemption from certificate of authority . .... 25.00

20 (E) Registration of a general partnership..... 50.00

21 (F) Registration of a limited partnership. .... 150.00

22 (G) Registration of a limited liability partnership for two-year term.. ..... 500.00

1 (H) Registration of a voluntary association. . . . . 50.00

2 (I) Registration of a trust or business trust. . . . . 50.00

3 (J) Amendment or correction of certificate of authority of a foreign corporation, including

4 change of name or increase of capital stock, in addition to any applicable license tax. . . . . 25.00

5 (K) Amendment or correction of certificate of limited partnership, limited liability

6 partnership, limited liability company or professional limited liability company, voluntary

7 association or business trust. . . . . 25.00

8 (L) Registration of trade name, otherwise designated as a true name, fictitious name or

9 D.B.A. (doing business as) name for any foreign business entity as permitted by law. . . . . 25.00

10 (M) Amendment and restatement of certificate of authority or of registration of a

11 corporation, limited partnership, limited liability partnership, limited liability company or

12 professional limited liability company, voluntary association or business trust. . . . . 25.00

13 (N) Articles of merger of two corporations, limited partnerships, limited liability

14 partnerships, limited liability companies or professional limited liability companies, voluntary

15 associations or business trusts. . . . . 25.00

16 (O) Plus for each additional party to the merger in excess

17 of two. . . . . 5.00

18 (P) Statement of conversion, when permitted, from one business entity into another business

19 entity, in addition to the cost of filing the appropriate articles or certificate to organize the surviving

20 entity. . . . . 25.00

21 (Q) Certificate of withdrawal or cancellation of a corporation, limited partnership, limited

22 liability partnership, limited liability company, voluntary association or business trust. . . . . 25.00

1 Notwithstanding any other provision of this section to the contrary, after June 30, 2008, the  
2 fees described in this subdivision that are collected for the issuance of a certificate relating to the  
3 initial registration of a corporation, limited partnership, domestic limited liability company or foreign  
4 limited liability company shall be deposited in the general administrative fees account established  
5 by this section.

6 (3) For receiving, filing and recording a change of the principal or designated office, change  
7 of the agent of process and/or change of officers, directors, partners, members or managers, as the  
8 case may be, of a corporation, limited partnership, limited liability partnership, limited liability  
9 company or other business entity as provided by law. . . . . \$15.00

10 (4) For receiving, filing and preserving a reservation of a name for each one hundred twenty  
11 days or for any other period in excess of seven days prescribed by law for a corporation, limited  
12 partnership, limited liability partnership or limited liability company. . . . . \$15.00

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

14 (A) Certificate of good standing of a domestic or foreign corporation. . . . . \$10.00

15 (B) Certificate of existence of a domestic limited liability company, and certificate of  
16 authorization foreign limited liability company.. . . . 10.00

17 (C) Certificate of existence of any business entity, trademark or service mark registered with  
18 the Secretary of State . . . . . 10.00

19 (D) Certified copy of corporate charter or comparable organizing documents for other  
20 business entities. . . . . 15.00

21 (E) Plus, for each additional amendment, restatement or other additional document. . 5.00

22 (F) Certificate of registration of the name of a foreign corporation, limited liability company,

- 1 limited partnership or limited liability partnership. . . . . 25.00
- 2 (G) And for the annual renewal of the name registration . . . . . 10.00
- 3 (H) Any other certificate not specified in this subdivision . . . . . 10.00
- 4 (6) For issuing a certificate other than those relating to business entities, as provided in this
- 5 subsection, as follows:
- 6 (A) Certificate or apostille relating to the authority of certain public officers, including the
- 7 membership of boards and commissions. . . . . \$10.00
- 8 (B) Plus, for each additional certificate pertaining to the same transaction. . . . . 5.00
- 9 (C) Any other certificate not specified in this subdivision. . . . . 10.00
- 10 (D) For acceptance, indexing and recordation of service of process any corporation, limited
- 11 partnership, limited liability partnership, limited liability company, voluntary association, business
- 12 trust, insurance company, person or other entity as permitted by law. . . . . 15.00
- 13 (E) For shipping and handling expenses for execution of service of process by certified mail
- 14 upon any defendant within the United States, which fee is to be deposited to the special revenue
- 15 account established in this section for the operation of the office of the Secretary of State. . . . . 5.00
- 16 (F) For shipping and handling expenses for execution of service of process upon any
- 17 defendant outside the United States by registered mail, which fee is to be deposited to the special
- 18 revenue account established in this section for the operation of the office of the Secretary of State.
- 19 . . . . . 15.00
- 20 (7) For a search of records of the office conducted by employees of or at the expense of the
- 21 Secretary of State upon request, as follows:
- 22 (A) For any search of archival records maintained at sites other than the office of the

- 1 Secretary of State no less than. . . . . \$10.00
- 2 (B) For searches of archival records maintained at sites other than the office of the Secretary
- 3 of State which require more than one hour, for each hour or fraction of an hour consumed in making
- 4 a search. . . . . 10.00
- 5 (C) For any search of records maintained on site for the purpose of obtaining copies of
- 6 documents or printouts of data. . . . . 5.00
- 7 (D) For any search of records maintained in electronic format which requires special
- 8 programming to be performed by the state information services agency or other vendor any actual
- 9 cost, but not less than. . . . . 25.00
- 10 (E) The cost of the search is in addition to the cost of any copies or printouts prepared or any
- 11 certificate issued pursuant to or based on the search.
- 12 (F) For recording any paper for which no specific fee is prescribed. . . . . 5.00
- 13 (8) For producing and providing photocopies or printouts of electronic data of specific
- 14 records upon request, as follows:
- 15 (A) For a copy of any paper or printout of electronic data, if one sheet. . . . . \$1.00
- 16 (B) For each sheet after the first . . . . . .50
- 17 (C) For sending the copies or lists by fax transmission. . . . . 5.00
- 18 (D) For producing and providing photocopies of lists, reports, guidelines and other
- 19 documents produced in multiple copies for general public use, a publication price to be established
- 20 by the Secretary of State at a rate approximating 2.00 plus .10 per page and rounded to the nearest
- 21 dollar.
- 22 (E) For electronic copies of records obtained in data format on disk, the cost of the record

1 in the least expensive available printed format, plus, for each required disk, which shall be provided  
2 by the Secretary of State..... 5.00

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

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

8 (d) The records maintained by the Secretary of State are prepared and indexed at the expense  
9 of the state and those records shall not be obtained for commercial resale without the written  
10 agreement of the state to a contract including reimbursement to the state for each instance of resale.

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

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

1 revenue account and used for the operation of the office of the Secretary of State:

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

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

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

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

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

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

19 (7) The fees for the application and record maintenance of all notaries public established by  
20 section twenty, article four, chapter thirty-nine of this code.

21 (8) The fees for registering credit service organizations as established by section five, article  
22 six-c, chapter forty-six-a of this code;

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

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

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

7 (12) All registration, license and other fees collected by the Secretary of State not specified  
8 in this section.

9 (g) Any balance in the service fees and collections account established by this section which  
10 exceeds five hundred thousand dollars as of June 30, 2003, and each year thereafter, shall be expired  
11 to the state fund, General Revenue Fund.

12 (h)(1) Effective July 1, 2008, there is hereby created in the State Treasury a special revenue  
13 account to be known as the general administrative fees account. Expenditures from the account shall  
14 be used for the operation of the office of the Secretary of State and are not authorized from  
15 collections, but are to be made only in accordance with appropriation by the Legislature and in  
16 accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment  
17 of the provisions set forth in article two, chapter eleven-b of this code: *Provided*, That for the fiscal  
18 year ending June 30, 2009, expenditures are authorized from collections rather than pursuant to an  
19 appropriation by the Legislature. Any balance in the account at the end of each fiscal year shall not  
20 revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this  
21 subsection.

22 (2) After June 30, 2008, all the fees and service charges established in section two-a of this

1 article for the following purposes shall be collected and deposited by the Secretary of State or other  
2 collecting agency in the general administrative fees account and used for the operation of the office  
3 of the Secretary of State:

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

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

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

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

21 (j) The Secretary of State shall provide a mechanism by which any overpayment of \$25 or  
22 less of any fee authorized by this or any other chapter of this code to the Secretary of State may be

- 1 deposited in the West Virginia Children's Trust Fund authorised by section one, article six-c, chapter
- 2 forty-nine of this code: *Provided*, That any person due a refund of \$25 or less for overpayment of
- 3 fees must voluntarily and affirmatively option for such refund to be deposited in the West Virginia
- 4 Children's Trust Fund.

NOTE: The purpose of this bill is to allow persons due a refund of \$25 or less to donate the refund amount to the West Virginia Children's Trust Fund rather than receiving the refund.

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