

Senate Bill No. 319

(By Senators D. Hall and Trump)

[Introduced January 27, 2015; referred to the Committee on Finance.]

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

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

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

13 **ARTICLE 1. FEES AND ALLOWANCES.**

14 **§59-1-2. Fees to be charged by Secretary of State.**

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

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

1 (A) Articles of incorporation of for-profit corporation. \$50.00

2 (B) Articles of incorporation of nonprofit corporation. 25.00

3 (C) Articles of organization of limited liability company. 100.00

4 (D) Agreement of a general partnership.. . . . 50.00

5 (E) Certificate of a limited partnership. 100.00

6 (F) Agreement of a voluntary association. 50.00

7 (G) Articles of organization of a business trust. 50.00

8 (H) Amendment or correction of articles of incorporation, including change of name or
 9 increase of capital stock, in addition to any applicable license tax. 25.00

10 (I) Amendment or correction, including change of name, of articles of organization of
 11 business trust, limited liability partnership, limited liability company or professional limited liability
 12 company or of certificate of limited partnership or agreement of voluntary association.. . . . 25.00

13 (J) Amendment and restatement of articles of incorporation, certificate of limited partnership,
 14 agreement of voluntary association or articles of organization of limited liability partnership, limited
 15 liability company or professional limited liability company or business trust.. . . . 25.00

16 (K) Registration of trade name, otherwise designated as a true name, fictitious name or
 17 D.B.A. (doing business as) name for any domestic business entity as permitted by law. . . . 25.00

18 (L) Articles of merger of two corporations, limited partnerships, limited liability partnerships,
 19 limited liability companies or professional limited liability companies, voluntary associations or
 20 business trusts. 25.00

21 (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

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

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

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

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

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

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

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

8 association or business trust..... 25.00

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

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

11 (M) Amendment and restatement of certificate of authority or of registration of a corporation,

12 limited partnership, limited liability partnership, limited liability company or professional limited

13 liability company, voluntary association or business trust..... 25.00

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

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

16 associations or business trusts..... 25.00

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

18 of two..... 5.00

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

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

21 entity..... 25.00

1 (Q) Certificate of withdrawal or cancellation of a corporation, limited partnership, limited
 2 liability partnership, limited liability company, voluntary association or business trust. 25.00
 3 Notwithstanding any other provision of this section to the contrary, after June 30, 2008, the fees
 4 described in this subdivision that are collected for the issuance of a certificate relating to the initial
 5 registration of a corporation, limited partnership, domestic limited liability company or foreign
 6 limited liability company shall be deposited in the general administrative fees account established
 7 by this section.

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

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

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

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

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

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

21 (D) Certified copy of corporate charter or comparable organizing documents for other

1 business entities. 15.00

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

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

4 limited partnership or limited liability partnership. 25.00

5 (G) And for the annual renewal of the name registration 10.00

6 (H) Any other certificate not specified in this subdivision 10.00

7 (6) For issuing a certificate other than those relating to business entities, as provided in this

8 subsection, as follows:

9 (A) Certificate or apostille relating to the authority of certain public officers, including the

10 membership of boards and commissions. \$10.00

11 (B) Plus, for each additional certificate pertaining to the same transaction. 5.00

12 (C) Any other certificate not specified in this subdivision. 10.00

13 (D) For acceptance, indexing and recordation of service of process any corporation, limited

14 partnership, limited liability partnership, limited liability company, voluntary association, business

15 trust, insurance company, person or other entity as permitted by law. 15.00

16 (E) For shipping and handling expenses for execution of service of process by certified mail

17 upon any defendant within the United States, which fee is to be deposited to the special revenue

18 account established in this section for the operation of the office of the Secretary of State. . . . 5.00

19 (F) For shipping and handling expenses for execution of service of process upon any

20 defendant outside the United States by registered mail, which fee is to be deposited to the special

21 revenue account established in this section for the operation of the office of the Secretary of State.

1 15.00

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

4 (A) For any search of archival records maintained at sites other than the office of the
5 Secretary of State no less than..... \$10.00

6 (B) For searches of archival records maintained at sites other than the office of the Secretary
7 of State which require more than one hour, for each hour or fraction of an hour consumed in making
8 a search..... 10.00

9 (C) For any search of records maintained on site for the purpose of obtaining copies of
10 documents or printouts of data..... 5.00

11 (D) For any search of records maintained in electronic format which requires special
12 programming to be performed by the state information services agency or other vendor any actual
13 cost, but not less than..... 25.00

14 (E) The cost of the search is in addition to the cost of any copies or printouts prepared or any
15 certificate issued pursuant to or based on the search.

16 (F) For recording any paper for which no specific fee is prescribed..... 5.00

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

19 (A) For a copy of any paper or printout of electronic data, if one sheet. \$1.00

20 (B) For each sheet after the first50

21 (C) For sending the copies or lists by fax transmission..... 5.00

1 (D) For producing and providing photocopies of lists, reports, guidelines and other
2 documents produced in multiple copies for general public use, a publication price to be established
3 by the Secretary of State at a rate approximating 2.00 plus .10 per page and rounded to the nearest
4 dollar.

5 (E) For electronic copies of records obtained in data format on disk, the cost of the record
6 in the least expensive available printed format, plus, for each required disk, which shall be provided
7 by the Secretary of State..... 5.00

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

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

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

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

19 (f) There is hereby continued in the State Treasury a special revenue account to be known
20 as the "service fees and collections" account. Expenditures from the account shall be used for the
21 operation of the office of the Secretary of State and are not authorized from collections, but are to

1 be made only in accordance with appropriation by the Legislature and in accordance with the
2 provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set
3 forth in article two, chapter five-a of this code. Notwithstanding any other provision of this code to
4 the contrary, except as provided in subsection (h) of this section and section two-a of this article, one
5 half of all the fees and service charges established in the following sections and for the following
6 purposes shall be deposited by the Secretary of State or other collecting agency to that special
7 revenue account and used for the operation of the office of the Secretary of State:

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

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

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

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

21 (5) The filing fees and search and copying fees for uniform commercial code transactions

1 established by section five hundred twenty-five, article nine, chapter forty-six of this code;

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

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

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

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

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

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

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

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

19 (h)(1) Effective July 1, 2008, there is hereby created in the State Treasury a special revenue
20 account to be known as the general administrative fees account. Expenditures from the account shall
21 be used for the operation of the office of the Secretary of State and are not authorized from

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

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

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

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

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

19 (i) There is continued in the office of the Secretary of State a noninterest-bearing, escrow
20 account to be known as the "prepaid fees and services account". This account shall be for the purpose
21 of allowing customers of the Secretary of State to prepay for services, with payment to be held in

1 escrow until services are rendered. Payments deposited in the account shall remain in the account
2 until services are rendered by the Secretary of State and at that time the fees will be reallocated to
3 the appropriate general or special revenue accounts. There shall be no fee charged by the Secretary
4 of State to the customer for the use of this account and the customer may request the return of any
5 moneys maintained in the account at any time without penalty. The assets of the prepaid fees and
6 services account do not constitute public funds of the state and are available solely for carrying out
7 the purposes of this section.

8 (j) The Secretary of State shall provide a mechanism by which any overpayment of \$25.00
9 or less of any fee authorized by this or any other chapter of this code to the Secretary of State may
10 be deposited in the West Virginia Children's Trust Fund authorised by section one, article six-c,
11 chapter forty-nine of this code: *Provided*, That any person due a refund of \$25.00 or less for
12 overpayment of fees must voluntarily and affirmatively option for such refund to be deposited in the
13 West Virginia Children's Trust Fund.

NOTE: The purpose of this bill is to allow persons due a refund of \$25.00 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.