

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2839

2015 Carryover

(BY DELEGATES MORGAN, WALTERS, ARVON, ZATEZALO,
AND BORDER)

[Introduced January 13, 2016; referred to the
Committee on Government Organization.]

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

Be it enacted by the Legislature of West Virginia:

1 That §59-1-2a of the Code of West Virginia, 1931, as amended, be amended and
2 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 fee" means the fee described in subsection (c) of this section that is to
3 be paid to the Secretary of State each year by corporations, limited partnerships, domestic limited
4 liability companies and foreign limited liability companies. After June 30, 2008, any reference in
5 this code to a fee paid to the Secretary of State for services as a statutory attorney in fact shall
6 mean the annual report fee described in this section.

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

15 (3) "Corporation" means a "domestic corporation", a "foreign corporation" or a "nonprofit
16 corporation".

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

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

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

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

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

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

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

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

36 (b) *Required payment of annual report fee and filing of annual report.* -- After June 30,
37 2008, no corporation, limited partnership, domestic limited liability company or foreign limited
38 liability company may engage in any business activity in this state without paying the annual report

39 fee and filing the annual report as required by this section.

40 (c) *Annual report fee.* -- After June 30, 2008, each corporation, limited partnership,
41 domestic limited liability company and foreign limited liability company engaged in or authorized
42 to do business in this state shall pay an annual report fee of \$25 for the services of the Secretary
43 of State as attorney-in-fact for the corporation, limited partnership, domestic limited liability
44 company or foreign limited liability company, and for such other administrative services as may
45 be imposed by law upon the Secretary of State. The fee is due and payable each year after the
46 initial registration of the corporation, limited partnership, domestic limited liability company or
47 foreign limited liability company with the annual report described in subsection (d) of this section
48 on or before the dates specified in subsection (e) of this section. The fee is due and payable
49 each year with the annual report from corporations, limited partnerships, domestic limited liability
50 companies and foreign limited liability companies that paid the registration fee prior to July 1,
51 2008, on or before the dates specified in subsection (e) of this section. The annual report fees
52 received by the Secretary of State pursuant to this subsection shall be deposited by the Secretary
53 of State in the general administrative fees account established by section two of this article.

54 (d) *Annual report.* -- (1) After June 30, 2008, each corporation, limited partnership,
55 domestic limited liability company and foreign limited liability company engaged in or authorized
56 to do business in this state shall file an annual report. The report is due each year after the initial
57 registration of the corporation, limited partnership, domestic limited liability company or foreign
58 limited liability company with the annual report fee described in subsection (c) of this section on
59 or before the dates specified in subsection (e) of this section. The report is due each year from
60 corporations, limited partnerships, domestic limited liability companies and foreign limited liability
61 companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in
62 subsection (e) of this section.

63 (2) (A) The annual report shall be filed with the Secretary of State on forms provided by
64 the Secretary of State for that purpose. The annual report shall, in the case of corporations,
65 contain: (i) The address of the corporation's principal office; (ii) the names and mailing addresses
66 of its officers and directors; (iii) the name and mailing address of the person on whom notice of
67 process may be served; (iv) the name and address of the corporation's parent corporation and of
68 each subsidiary of the corporation licensed to do business in this state; (v) in the case of limited
69 partnerships domestic limited liability companies and foreign limited liability companies, similar
70 information with respect to their principal or controlling interests as determined by the Secretary
71 of State or otherwise required by law to be reported to the Secretary of State; (vi) the county or
72 county code in which the principal office address or mailing address of the company is located;
73 (vii) business class code; and (viii) any other information the Secretary of State considers
74 appropriate.

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

86 (e) *Annual reports and fees due July 1.* -- Each domestic and foreign corporation, limited

87 partnership, limited liability company and foreign limited liability company shall file with the
88 Secretary of State the annual report and pay the annual report fee by July 1 of each year.

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

92 (g) (1) *Duty to pay.* -- It shall be the duty of each corporation, limited partnership, limited
93 liability company and foreign limited liability company required to pay the annual report fees
94 imposed under this article, to remit them with a properly completed annual report to the Secretary
95 of State, ~~and if it fails to do so it shall be subject to the late fees prescribed in subsection (h) of~~
96 ~~this article and dissolution or revocation, pursuant to this code:~~ *Provided,* That before dissolution
97 or revocation for failure to pay fees may occur, the Secretary of State shall notify the entity by
98 certified mail, return receipt requested, of its failure to pay, all late fees or bad check fees
99 associated with the failure to pay and the date upon which dissolution or revocation will occur if
100 all fees are not paid in full. The certified mail required by this subdivision shall be postmarked at
101 least thirty days before the dissolution or revocation date listed in the notice.

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

110 ~~(h) *Late fees.* -- (1) The following late fees shall be in addition to any other penalties and~~

111 ~~remedies available elsewhere in this code:~~

112 ~~(A) Administrative late fee. -- The Secretary of State shall assess upon each corporation,~~
113 ~~limited partnership, limited liability company and foreign limited liability company delinquent in the~~
114 ~~payment of an annual report fee or the filing of an annual report an administrative late fee in the~~
115 ~~amount of \$50.~~

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

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

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

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

134 (2) Notwithstanding any other provisions of this code to the contrary, upon receipt of notice

135 from the Secretary of State that a corporation, limited partnership, limited liability company and
136 foreign limited liability company is more than thirty days delinquent in the payment of annual report
137 fees or in the filing of an annual report required by this section, the Tax Commissioner may
138 suspend, cancel or withhold a business registration certificate issued to or applied for by the
139 delinquent corporation, limited partnership, limited liability company or foreign limited liability
140 company until the same is paid and filed in the manner provided for the suspension, cancellation
141 or withholding of business registration certificates for other reasons under article twelve, chapter
142 eleven of this code.

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

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

153 ~~(l)~~ (k) *Rules.* -- The Secretary of State may propose legislative rules for ~~promulgation~~
154 legislative approval pursuant to article three, chapter twenty-nine-a of this code to implement this
155 article, and may, pending ~~promulgation~~ approval of those rules, promulgate emergency rules
156 pursuant to ~~those provisions for those purposes.~~ section fifteen, article three, chapter twenty-
157 nine-a

158 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.