

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

for

Senate Bill 432

BY SENATORS WELD, PHILLIPS, UNGER, AND JEFFRIES

[Introduced February 23, 2021; referred
to the Committee on Military]

1 A BILL to amend and reenact §59-1-2a of the Code of West Virginia, 1931, as amended, relating
2 to annual business fees to be paid to the Secretary of State; and including in the definition
3 of “veteran”, as that term pertains to veteran-owned businesses, the legal spouse of a
4 veteran.

Be it enacted by the Legislature of West Virginia:

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 §59-1-2a(c) of this code that is to be
3 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 §31D-15-1501(b) of this code, except for the activity of
10 conducting affairs in interstate commerce when activity occurs in this state, nor does it mean any
11 of the activities of foreign limited liability companies enumerated in §31B-10-1003(a) of this code,
12 except for the activity of conducting affairs in interstate commerce when activity occurs in this
13 state.

14 (3) “Corporation” means a “domestic corporation”, a “foreign corporation”, or a “nonprofit
15 corporation”.

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

19 (5) "Domestic corporation" means a corporation for profit which is not a foreign corporation
20 incorporated under or subject to chapter 31D of this code.

21 (6) "Domestic limited liability company" means a limited liability company which is not a
22 foreign limited liability company under or subject to chapter 31B of this code.

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

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

27 (9) "Limited partnership" means a partnership as defined by §47-9-1 of this code.

28 (10) "Nonprofit corporation" means a nonprofit corporation as defined by §31E-1-150 of
29 this code.

30 (11) "Registration fee" means the fee for the issuance of a certificate relating to the initial
31 registration of a corporation, limited partnership, domestic limited liability company or foreign
32 limited liability company described in §59-1-2(a)(2) of this code. The term "initial registration" also
33 means the date upon which the registration fee is paid.

34 (12) "Veteran" means any person who has served as an active member of the armed
35 forces of the United States, the National Guard, or a reserve component as described in 38 U.S.C.
36 §101. Notwithstanding any provision in this code to the contrary, a veteran must be honorably
37 discharged or under honorable conditions as described in 38 U.S.C. §101.

38 (13) "Veteran-owned business" means a business that meets the following criteria:

39 (A) Is at least 51 percent unconditionally owned by one or more veterans or the legal
40 spouse of a veteran; or

41 (B) In the case of a publicly owned business, at least 51 percent of the stock is
42 unconditionally owned by one or more veterans or the legal spouse of a veteran.

43 (b) *Required payment of annual report fee and filing of annual report.* – After June 30,
44 2008, no corporation, limited partnership, domestic limited liability company, or foreign limited

45 liability company may engage in any business activity in this state without paying the annual report
46 fee and filing the annual report as required by this section.

47 (c) *Annual report fee.* – After June 30, 2008, each corporation, limited partnership,
48 domestic limited liability company, and foreign limited liability company engaged in or authorized
49 to do business in this state shall pay an annual report fee of \$25 for the services of the Secretary
50 of State as attorney-in-fact for the corporation, limited partnership, domestic limited liability
51 company, or foreign limited liability company and for such other administrative services as may
52 be imposed by law upon the Secretary of State. The fee is due and payable each year after the
53 initial registration of the corporation, limited partnership, domestic limited liability company, or
54 foreign limited liability company with the annual report described in §59-1-2a(d) of this code on or
55 before the dates specified in §59-1-2a(e) of this code. The fee is due and payable each year with
56 the annual report from corporations, limited partnerships, domestic limited liability companies, and
57 foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or before
58 the dates specified in §59-1-2a(e) of this code. The annual report fees received by the Secretary
59 of State pursuant to this subsection shall be deposited by the Secretary of State in the General
60 Administrative Fees Account established by §59-1-2 of this code.

61 (d) *Annual report.* –

62 (1) After June 30, 2008, each corporation, limited partnership, domestic limited liability
63 company, and foreign limited liability company engaged in or authorized to do business in this
64 state shall file an annual report. The report is due each year after the initial registration of the
65 corporation, limited partnership, domestic limited liability company, or foreign limited liability
66 company with the annual report fee described in §59-1-2a(c) of this code on or before the dates
67 specified in §59-1-2a(e) of this code. The report is due each year from corporations, limited
68 partnerships, domestic limited liability companies, and foreign limited liability companies that paid
69 the registration fee prior to July 1, 2008, on or before the dates specified in §59-1-2a(e) of this
70 code.

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

83 (B) Notwithstanding any other provision of law to the contrary, the Secretary of State shall,
84 upon request of any person, disclose, with respect to corporations: (i) The address of the
85 corporation's principal office; (ii) the names and addresses of its officers and directors; (iii) the
86 name and mailing address of the person on whom notice of process may be served; (iv) the name
87 and address of each subsidiary of the corporation and the corporation's parent corporation; (v)
88 the county or county code in which the principal office address or mailing address of the company
89 is located; and (vi) the business class code. The Secretary of State shall provide similar
90 information with respect to information in its possession relating to limited partnerships, domestic
91 limited liability companies, and foreign limited liability companies, similar information with respect
92 to their principal or controlling interests.

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

96 (f) *Deposit of fees.* – The annual report fees received by the Secretary of State pursuant

97 to this section shall be deposited by the Secretary of State in the General Administrative Fees
98 Account established by §59-1-2 of this code.

99 (g) (1) *Duty to pay.* – It shall be the duty of each corporation, limited partnership, limited
100 liability company, and foreign limited liability company required to pay the annual report fees
101 imposed under this article to remit them with a properly completed annual report to the Secretary
102 of State, and if it fails to do so it shall be subject to the late fees prescribed in §59-1-2a(h) of this
103 code and dissolution or revocation, pursuant to this code: *Provided*, That before dissolution or
104 revocation for failure to pay fees may occur, the Secretary of State shall notify the entity by
105 certified mail, return receipt requested, of its failure to pay, all late fees or bad check fees
106 associated with the failure to pay, and the date upon which dissolution or revocation will occur if
107 all fees are not paid in full. The certified mail required by this subdivision shall be postmarked at
108 least 30 days before the dissolution or revocation date listed in the notice.

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

117 (h) *Late fees.* –

118 (1) The following late fees shall be in addition to any other penalties and remedies
119 available elsewhere in this code:

120 (A) *Administrative late fee.* – The Secretary of State shall assess upon each corporation,
121 limited partnership, limited liability company, and foreign limited liability company delinquent in
122 the payment of an annual report fee or the filing of an annual report an administrative late fee in

123 the amount of \$50.

124 (B) *Administrative late fees for nonprofit corporations.* – The Secretary of State shall
125 assess each nonprofit corporation delinquent in the payment of an annual report fee or the filing
126 of an annual report an administrative late fee in the amount of \$25.

127 (2) The Secretary of State shall deposit the first \$25,000 of fees collected under this
128 subsection into the General Administrative Fees Account established in §59-1-2(h) of this code
129 and shall deposit any additional fees collected under this section into the General Revenue Fund
130 of the state.

131 (i) *Reports to Tax Commissioner; suspension, cancellation or withholding of business*
132 *registration certificate.* –

133 (1) The Secretary of State shall, within 20 days after the close of each month, make a
134 report to the Tax Commissioner for the preceding month, in which he or she shall set out the
135 name of every business entity to which he or she issued a certificate to conduct business in the
136 state of West Virginia during that month. The report shall set out the names and addresses of all
137 corporations, limited partnerships, limited liability companies, and foreign limited liability
138 companies to which he or she issued certificates of change of name or of change of location of
139 principal office, dissolution, withdrawal, or merger. If the Secretary of State fails to make the
140 report, it shall be the duty of the Tax Commissioner to report such failure to the Governor. A writ
141 of mandamus shall lie for correction of such failure.

142 (2) Notwithstanding any other provisions of this code to the contrary, upon receipt of notice
143 from the Secretary of State that a corporation, limited partnership, limited liability company, and
144 foreign limited liability company is more than 30 days delinquent in the payment of annual report
145 fees or in the filing of an annual report required by this section, the Tax Commissioner may
146 suspend, cancel, or withhold a business registration certificate issued to or applied for by the
147 delinquent corporation, limited partnership, limited liability company, or foreign limited liability
148 company until the same is paid and filed in the manner provided for the suspension, cancellation,

149 or withholding of business registration certificates for other reasons under §11-12-1 *et seq.* of this
150 code.

151 (j) *Purchase of data.* – The Secretary of State will provide electronically, for purchase, any
152 data maintained in the Secretary of State’s Business Organizations Database. For the electronic
153 purchase of the entire Business Organizations Database, the cost is \$12,000. For the purchase
154 of the monthly updates of the Business Organizations Database, the cost is \$1,000 per month.
155 The fees received by the Secretary of State pursuant to this subsection shall be deposited by the
156 Secretary of State in the General Administrative Fees Account established by §59-1-2 of this
157 code.

158 (k) The Secretary of State is authorized to collect the service fee per transaction, if any,
159 charged for an online service from any customer who purchases data or conducts transactions
160 through an online service.

161 (l) *Rules.* – The Secretary of State may propose rules for legislative approval, in
162 accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement this article.

163 (m) A veteran-owned business, as defined in §59-1-2a(a)(13) of this code, commenced
164 on or after July 1, 2015, is exempt from paying the annual report fee~~;~~ required by this section, or
165 the fees contained in §59-1-2 of this code, for the first four years after its initial registration:
166 *Provided*, That a veteran-owned business is not exempt from any filing deadlines or other fees
167 required by this section.

NOTE: The purpose of this bill is to include in the definition of “veteran”, as that term
pertains to veteran-owned businesses, the legal spouse of a veteran.

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