

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 531

By Senators Woodrum and Barrett

[Introduced January 31, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia 1931, as amended, by adding thereto a new article,
 2 designated §31B-14-101, §31B-14-102, §31B-14-103, §31B-14-104, and §31B-14-105;
 3 and to amend and reenact §59-1-2 of said code, all relating to the creation of protected
 4 series under a parent limited liability company; providing for the allowance of a protected
 5 series; providing for a name; providing for a reporting to the West Virginia Secretary of
 6 State; providing for the effect of the operating agreement and a nonwaivable provision; and
 7 providing for the application of the article.

Be it enacted by the Legislature of West Virginia:

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 13. PROTECTED SERIES UNDER LIMITED LIABILITY COMPANIES.

§31B-14-101. Allowance for Protected Series

1 (a) A limited liability company agreement may establish or provide for the establishment of
 2 1 or more designated series of limited liability company interests or assets. Any such series may
 3 have separate rights, powers or duties with respect to specified property or obligations of the
 4 limited liability company or profits and losses associated with specified property or obligations, and
 5 any such series may have a separate business purpose or investment objective.

6 (b) A series established in accordance with the following sentence is a protected series.
 7 Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, in
 8 the event that a limited liability company agreement establishes or provides for the establishment
 9 of 1 or more series, and to the extent the records maintained for any such series account for the
 10 assets associated with such series separately from the other assets of the limited liability
 11 company, or any other series thereof, and if the limited liability company agreement so provides,
 12 and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in
 13 the certificate of formation of the limited liability company, then the debts, liabilities, obligations and
 14 expenses incurred, contracted for or otherwise existing with respect to such series shall be

15 enforceable against the assets of such series only, and not against the assets of the limited liability
16 company generally or any other series thereof, and, unless otherwise provided in the limited
17 liability company agreement, none of the debts, liabilities, obligations and expenses incurred,
18 contracted for or otherwise existing with respect to the limited liability company generally or any
19 other series thereof shall be enforceable against the assets of such series. Neither the preceding
20 sentence nor any provision pursuant thereto in a limited liability company agreement or certificate
21 of formation shall (i) restrict a protected series or limited liability company on behalf of a protected
22 series from agreeing in the limited liability company agreement or otherwise that any or all of the
23 debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with
24 respect to the limited liability company generally or any other series thereof shall be enforceable
25 against the assets of such protected series or (ii) restrict a limited liability company from agreeing
26 in the limited liability company agreement or otherwise that any or all of the debts, liabilities,
27 obligations and expenses incurred, contracted for or otherwise existing with respect to a protected
28 series shall be enforceable against the assets of the limited liability company generally. A limited
29 liability company agreement does not need to use the term protected when referencing series or
30 refer to this section. Assets associated with a protected series may be held directly or indirectly,
31 including in the name of such series, in the name of the limited liability company, through a
32 nominee or otherwise. Records maintained for a protected series that reasonably identify its
33 assets, including by specific listing, category, type, quantity, computational or allocational formula
34 or procedure (including a percentage or share of any asset or assets) or by any other method
35 where the identity of such assets is objectively determinable, will be deemed to account for the
36 assets associated with such series separately from the other assets of the limited liability
37 company, or any other series thereof. Notice in a certificate of formation of the limitation on
38 liabilities of a protected series as referenced in this subsection shall be sufficient for all purposes of
39 this subsection whether or not the limited liability company has established any protected series
40 when such notice is included in the certificate of formation, and there shall be no requirement that

41 (i) any specific protected series of the limited liability company be referenced in such notice, or (ii)
42 such notice use the term protected when referencing series or include a reference to this section.
43 The fact that a certificate of formation that contains the foregoing notice of the limitation on
44 liabilities of a protected series is on file in the office of the Secretary of State shall constitute notice
45 of such limitation on liabilities of a protected series. As used in this chapter, a reference to assets
46 of a protected series includes assets associated with such series, a reference to assets associated
47 with a protected series includes assets of such series, a reference to members or managers of a
48 protected series includes members or managers associated with such series, and a reference to
49 members or managers associated with a protected series includes members or managers of such
50 series. The following shall apply to a protected series:

51 (1) All members or managers of the protected series must be the same as the members or
52 managers of the limited liability company and must be the same as the members or managers of
53 each subsequent LLC in the protected series.

54 (2) A protected series may carry on any lawful business, purpose or activity, whether or not
55 for profit, with the exception of the business of banking as defined in §31A-1-2(c) of this code.
56 Unless otherwise provided in a limited liability company agreement, a protected series shall have
57 the power and capacity to, in its own name, contract, hold title to assets (including real, personal
58 and intangible property), grant liens and security interests, and sue and be sued.

59 (3) Except as otherwise provided by this chapter, no member or manager of a protected
60 series shall be obligated personally for any debt, obligation or liability of such series, whether
61 arising in contract, tort or otherwise, solely by reason of being a member or acting as manager of
62 such series. Notwithstanding the preceding sentence, under a limited liability company agreement
63 or under another agreement, a member or manager may agree to be obligated personally for any
64 or all of the debts, obligations and liabilities of 1 or more protected series.

65 (4) A limited liability company agreement may provide for classes or groups of members or
66 managers associated with a protected series having such relative rights, powers and duties as the

67 limited liability company agreement may provide, and may make provision for the future creation in
68 the manner provided in the limited liability company agreement of additional classes or groups of
69 members or managers associated with such series having such relative rights, powers and duties
70 as may from time to time be established, including rights, powers and duties senior to existing
71 classes and groups of members or managers associated with such series. A limited liability
72 company agreement may provide for the taking of an action, including the amendment of the
73 limited liability company agreement, without the vote or approval of any member or manager or
74 class or group of members or managers, including an action to create under the provisions of the
75 limited liability company agreement a class or group of a protected series of limited liability
76 company interests that was not previously outstanding. A limited liability company agreement may
77 provide that any member or class or group of members associated with a protected series shall
78 have no voting rights.

79 (5) A limited liability company agreement may grant to all or certain identified members or
80 managers or a specified class or group of the members or managers associated with a protected
81 series the right to vote separately or with all or any class or group of the members or managers
82 associated with such series, on any matter. Voting by members or managers associated with a
83 protected series may be on a per capita, number, financial interest, class, group or any other basis.

84 (6) Unless otherwise provided in a limited liability company agreement, the management of
85 a protected series shall be vested in the members associated with the Limited Liability Company in
86 proportion to the then current percentage or other interest of members in the profits of such series
87 owned by all of the members associated with such series, the decision of members owning more
88 than 50 percent of the said percentage or other interest in the profits controlling; provided,
89 however, that if a limited liability company agreement provides for the management of a protected
90 series, in whole or in part, by a manager, the management of such series, to the extent so
91 provided, shall be vested in the manager who shall be chosen in the manner provided in the limited
92 liability company agreement. The manager of a protected series shall also hold the offices and

93 have the responsibilities accorded to the manager as set forth in a limited liability company
94 agreement. A protected series may have more than 1 manager. Subject to §31B-4-404 of this
95 code, a manager shall cease to be a manager with respect to a protected series as provided in a
96 limited liability company agreement. Except as otherwise provided in a limited liability company
97 agreement, any event under this chapter or in a limited liability company agreement that causes a
98 manager to cease to be a manager with respect to a protected series shall not, in itself, cause such
99 manager to cease to be a manager of the limited liability company or with respect to any other
100 series thereof.

101 (7) Notwithstanding §31B-4-405 of this code, but subject to paragraphs (b)(7) and (b)(10)
102 of this section, and unless otherwise provided in a limited liability company agreement, at the time
103 a member of a protected series becomes entitled to receive a distribution with respect to such
104 series, the member has the status of, and is entitled to all remedies available to, a creditor of such
105 series, with respect to the distribution. A limited liability company agreement may provide for the
106 establishment of a record date with respect to allocations and distributions with respect to a
107 protected series.

108 (8) Notwithstanding §31B-4-406 of this code, a limited liability company may make a
109 distribution with respect to a protected series. A limited liability company shall not make a
110 distribution with respect to a protected series to a member to the extent that at the time of the
111 distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to
112 members on account of their limited liability company interests with respect to such series and
113 liabilities for which the recourse of creditors is limited to specified property of such series, exceed
114 the fair value of the assets associated with such series, except that the fair value of property of
115 such series that is subject to a liability for which the recourse of creditors is limited shall be
116 included in the assets associated with such series only to the extent that the fair value of that
117 property exceeds that liability. For purposes of the immediately preceding sentence, the term
118 "distribution" shall not include amounts constituting reasonable compensation for present or past

119 services or reasonable payments made in the ordinary course of business pursuant to a bona fide
120 retirement plan or other benefits program. A member who receives a distribution in violation of this
121 paragraph (b)(7), and who knew at the time of the distribution that the distribution violated this
122 paragraph (b)(7), shall be liable to the protected series for the amount of the distribution. A
123 member who receives a distribution in violation of this paragraph (b)(7), and who did not know at
124 the time of the distribution that the distribution violated this paragraph (b)(7), shall not be liable for
125 the amount of the distribution. Subject to §31B-4-406 of this code, which shall apply to any
126 distribution made with respect to a protected series under this paragraph (b)(7), this paragraph
127 (b)(7) shall not affect any obligation or liability of a member under an agreement or other applicable
128 law for the amount of a distribution.

129 (9) Unless otherwise provided in the limited liability company agreement, a member shall
130 cease to be associated with a protected series but will also cease to be a member of the company
131 and each subsequent series, and to have the power to exercise any rights or powers of a member
132 with respect to such series upon the assignment of all of the member's limited liability company
133 interest with respect to such series. Except as otherwise provided in a limited liability company
134 agreement, any event under this chapter or a limited liability company agreement that causes a
135 member to cease to be associated with a protected series shall not, in itself, cause such member
136 to cease to be associated with any other series or terminate the continued membership of a
137 member in the limited liability company or cause the termination of the protected series, regardless
138 of whether such member was the last remaining member associated with such series.

139 (10) Subject to §31B-8-801 of this code, except to the extent otherwise provided in the
140 limited liability company agreement, a protected series may be terminated, and its affairs wound
141 up without causing the dissolution of the limited liability company. The termination of a protected
142 series shall not affect the limitation on liabilities of such series provided by this subsection (b). A
143 protected series is terminated, and its affairs shall be wound up upon the dissolution of the limited
144 liability company under §31B-8-801 of this code or otherwise upon the first to occur of the

145 following:

146 (A) At the time specified in the limited liability company agreement;

147 (B) Upon the happening of events specified in the limited liability company agreement;

148 (C) Unless otherwise provided in the limited liability company agreement, upon the vote or

149 consent of members associated with such series who own more than 2/3 of the then-current

150 percentage or other interest in the profits of such series of the limited liability company owned by

151 all of the members; or

152 (D) The termination of such series under paragraph (b)(11) of this section.

153 (11) Unless otherwise provided in a limited liability company agreement, a limited liability

154 company whose original certificate of formation was filed with the Secretary of State and effective

155 on or prior to June 1, 2023, shall continue to be governed by paragraph (k)(3) of this section as in

156 effect on June 1, 2023 (except that "affirmative" and "written" shall be deleted from such paragraph

157 (k)(3) of this section).

158 (12) Notwithstanding §31B-8-801 of this code, unless otherwise provided in the limited

159 liability company agreement, a manager associated with a protected series who has not

160 wrongfully terminated such series or, if none, the members associated with such series or a

161 person approved by the members associated with such series, in either case, by members who

162 own more than 50 percent of the then current percentage or other interest in the profits of such

163 series owned by all of the members associated with such series, may wind up the affairs of such

164 series; but a Court, upon cause shown, may wind up the affairs of a protected series upon

165 application of any member or manager associated with such series, or the member's personal

166 representative or assignee, and in connection therewith, may appoint a liquidating trustee. The

167 persons winding up the affairs of a protected series may, in the name of the limited liability

168 company and for and on behalf of the limited liability company and such series, take all actions

169 with respect to such series as are permitted under §31B-8-803(c) of this code. The persons

170 winding up the affairs of a protected series shall provide for the claims and obligations of such

171 series and distribute the assets of such series as provided in §31B-8-806 of this code, which
 172 section shall apply to the winding up and distribution of assets of a protected series. Actions taken
 173 in accordance with this paragraph (b)(10) shall not affect the liability of members and shall not
 174 impose liability on a liquidating trustee. Unless otherwise provided in a limited liability company
 175 agreement, a limited liability company whose original certificate of formation was filed with the
 176 Secretary of State and effective on or prior to June 1, 2023, shall continue to be governed by the
 177 first sentence of this paragraph (b)(10) as in effect on June 1, 2023.

178 (c) If a foreign limited liability company that is registering to do business in the State of
 179 West Virginia in accordance with Article 10 of Chapter 31B is governed by a limited liability
 180 company agreement that establishes or provides for the establishment of designated series of
 181 members, managers, limited liability company interests or assets having separate rights, powers
 182 or duties with respect to specified property or obligations of the foreign limited liability company or
 183 profits and losses associated with specified property or obligations, that fact shall be so stated on
 184 the application for registration as a foreign limited liability company. In addition, the foreign limited
 185 liability company shall state on such application whether the debts, liabilities and obligations
 186 incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be
 187 enforceable against the assets of such series only, and not against the assets of the foreign limited
 188 liability company generally or any other series thereof, and whether any of the debts, liabilities,
 189 obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign
 190 limited liability company generally or any other series thereof shall be enforceable against the
 191 assets of such series.

§31B-14-102- Name.

1 A protected series established under a limited liability company must begin or end with the
 2 name of its parent LLC, and "Protected Series" or "P.S."

§31B-14-103- Annual report for Secretary of State.

1 (a) A parent LLC of one or more protected series authorized to transact business in this

2 state, shall deliver to the Secretary of State for filing an annual report that sets forth:

3 (1) The name of all protected series registered under the parent LLC, and the name of the
4 parent LLC;

5 (2) The state or country under whose law it is organized;

6 (3) The address of its designated office, if any and the name and address of its agent for
7 service of process in this state, if any;

8 (4) The address of its principal office;

9 (5) The names and business addresses of any managers and the name and address of
10 each member having authority to execute instruments on behalf of the limited liability company;
11 and

12 (6) An e-mail address where informational notices and reminders of annual filings may be
13 sent, unless there is a technical inability to comply.

14 (b) Information in an annual report must be current as of the date the annual report is
15 signed on behalf of the parent LLC.

16 (c) The first annual report must be delivered to the Secretary of State from January 1 to
17 June 30 of the year following the calendar year in which a protected series was organized or a
18 foreign company was authorized to transact business. Subsequent annual reports must be
19 delivered to the Secretary of State from January 1 to June 30 of the ensuing calendar years.

20 (d) If an annual report does not contain the information required in subsection (a) of this
21 section, the Secretary of State shall promptly notify the reporting protected series and its parent
22 LLC and return the report to it for correction. If the report is corrected to contain the information
23 required in subsection (a) of this section and delivered to the Secretary of State within thirty days
24 after the effective date of the notice, it is timely filed.

§31B-14-104. Effect of operating agreement; nonwaivable provision.

1 (a) Except as otherwise provided in subsection (b) of this section, all members of a
2 protected series of a limited liability company may enter into an operating agreement, which need

3 not be in writing, to regulate the affairs of the company and the conduct of its business, and to
4 govern relations among the members, managers and company. To the extent the operating
5 agreement does not otherwise provide, this chapter governs relations among the members,
6 managers and company.

7 (b) The operating agreement may not:

8 (1) Unreasonably restrict a right to information or access to records under section §31B-4-
9 408 of this code;

10 (2) Eliminate the duty of loyalty under section §31B-4-409(b) or §31B-6-603(b)(3) of this
11 code, but the agreement may:

12 (A) Identify specific types or categories of activities that do not violate the duty of loyalty, if
13 not manifestly unreasonable; and

14 (B) Specify the number or percentage of members or disinterested managers that may
15 authorize or ratify, after full disclosure of all material facts, a specific act or transaction that
16 otherwise would violate the duty of loyalty;

17 (3) Unreasonably reduce the duty of care under section §31B-4-409(c) or §31B-6-
18 603(b)(3) of this code;

19 (4) Eliminate the obligation of good faith and fair dealing under section §31B-4-409(d) of
20 this code, but the operating agreement may determine the standards by which the performance of
21 the obligation is to be measured, if the standards are not manifestly unreasonable;

22 (5) Vary the right to expel a member in an event specified in section §31B-6-601(6) of this
23 code;

24 (6) Vary the requirement to wind up the limited liability company's business in a case
25 specified in section §31B-8-801(b)(4) or (b)(5) of this code; or

26 (7) Restrict rights of a person, other than a manager, member and transferee of a
27 member's distributional interest, under this chapter

§31B-14-105. Application of article.

1 Except as otherwise specifically provided in this article, all provisions of this chapter
 2 governing limited liability companies shall be applicable to protected series.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS;
 LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

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

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

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

8 (A) Articles of incorporation of for-profit corporation, \$100;

9 (B) Articles of incorporation of nonprofit corporation, \$25;

10 (C) Articles of organization of a parent limited liability company or a protected series of any
 11 parent limited liability company, \$100;

12 (D) Agreement of a general partnership, \$50;

13 (E) Certificate of a limited partnership, \$100;

14 (F) Agreement of a voluntary association, \$50;

15 (G) Articles of organization of a business trust, \$50;

16 (H) Amendment or correction of articles of incorporation, including change of name or
 17 increase of capital stock, in addition to any applicable license tax, \$25;

18 (I) Amendment or correction, including change of name, of articles of organization of
 19 business trust, limited liability partnership, limited liability company, or professional limited liability

20 company; or of certificate of limited partnership; or of agreement of voluntary association, \$25;

21 (J) Amendment and restatement of articles of incorporation, certificate of limited
22 partnership, agreement of voluntary association or articles of organization of limited liability
23 partnership, limited liability company or professional limited liability company or business trust,
24 \$25;

25 (K) Registration of trade name, otherwise designated as a true name, fictitious name or D.
26 B. A. (doing business as) name for any domestic business entity as permitted by law, \$25;

27 (L) Articles of merger of two corporations, limited partnerships, limited liability partnerships,
28 limited liability companies or professional limited liability companies, voluntary associations or
29 business trusts, \$25;

30 (M) Plus for each additional party to the merger in excess of two, \$15;

31 (N) Statement of conversion, when permitted, from one business entity into another
32 business entity, in addition to the cost of filing the appropriate documents to organize the surviving
33 entity, \$25;

34 (O) Articles of dissolution of a corporation, voluntary association or business trust, or
35 statement of dissolution of a general partnership, \$25;

36 (P) Revocation of voluntary dissolution of a corporation, voluntary association or business
37 trust, \$15;

38 (Q) Articles of termination of a limited liability company, cancellation of a limited partnership
39 or statement of withdrawal of limited liability partnership, \$25;

40 (R) Reinstatement of a limited liability company or professional limited liability company
41 after administrative dissolution, \$25.

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

- 46 (A) Certificate of authority of for-profit corporation, \$100;
- 47 (B) Certificate of authority of nonprofit corporation, \$50;
- 48 (C) Certificate of authority of foreign limited liability companies, \$150;
- 49 (D) Certificate of exemption from certificate of authority, \$25;
- 50 (E) Registration of a general partnership, \$50;
- 51 (F) Registration of a limited partnership, \$150;
- 52 (G) Registration of a limited liability partnership for two-year term, \$500;
- 53 (H) Registration of a voluntary association, \$50;
- 54 (I) Registration of a trust or business trust, \$50;
- 55 (J) Amendment or correction of certificate of authority of a foreign corporation, including
- 56 change of name or increase of capital stock, in addition to any applicable license tax, \$25;
- 57 (K) Amendment or correction of certificate of limited partnership, limited liability
- 58 partnership, limited liability company or professional limited liability company, voluntary
- 59 association or business trust, \$25;
- 60 (L) Registration of trade name, otherwise designated as a true name, fictitious name or D.
- 61 B. A. (doing business as) name for any foreign business entity as permitted by law, \$25;
- 62 (M) Amendment and restatement of certificate of authority or of registration of a
- 63 corporation, limited partnership, limited liability partnership, limited liability company or
- 64 professional limited liability company, voluntary association or business trust, \$25;
- 65 (N) Articles of merger of two corporations, limited partnerships, limited liability
- 66 partnerships, limited liability companies or professional limited liability companies, voluntary
- 67 associations or business trusts, \$25;
- 68 (O) Plus, for each additional party to the merger in excess of two, \$5;
- 69 (P) Statement of conversion, when permitted, from one business entity into another
- 70 business entity, in addition to the cost of filing the appropriate articles or certificate to organize the
- 71 surviving entity, \$25;

72 (Q) Certificate of withdrawal or cancellation of a corporation, limited partnership, limited
73 liability partnership, limited liability company, voluntary association or business, trust \$25;

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

79 (3) For receiving, filing and recording a change of the principal or designated office, change
80 of the agent of process and/or change of officers, directors, partners, members or managers, as
81 the case may be, of a corporation, limited partnership, limited liability partnership, limited liability
82 company or other business entity as provided by law, \$15.

83 (4) For receiving, filing and preserving a reservation of a name for each 120 days or for any
84 other period in excess of seven days prescribed by law for a corporation, limited partnership,
85 limited liability partnership or limited liability company, \$15;

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

87 (A) Certificate of good standing of a domestic or foreign corporation, \$10;

88 (B) Certificate of existence of a domestic limited liability company and certificate of
89 authorization foreign limited liability company, \$10;

90 (C) Certificate of existence of any business entity, trademark or service mark registered
91 with the Secretary of State, \$10;

92 (D) Certified copy of corporate charter or comparable organizing documents for other
93 business entities, \$15;

94 (E) Plus, for each additional amendment, restatement or other additional document, \$5;

95 (F) Certificate of registration of the name of a foreign corporation, limited liability company,
96 limited partnership or limited liability partnership, \$25;

97 (G) And for the annual renewal of the name registration, \$10;

98 (H) Any other certificate not specified in this subdivision, \$10.

99 (6) For issuing a certificate other than those relating to business entities, as provided in this
100 subsection, as follows:

101 (A) Certificate or apostille relating to the authority of certain public officers, including the
102 membership of boards and commissions, \$10;

103 (B) Plus, for each additional certificate pertaining to the same transaction, \$5;

104 (C) Any other certificate not specified in this subdivision, \$10;

105 (D) For acceptance, indexing and recordation of service of process for any corporation,
106 limited partnership, limited liability partnership, limited liability company, voluntary association,
107 business trust, insurance company, person or other entity as permitted by law, \$15;

108 (E) For shipping and handling expenses for execution of service of process by certified
109 mail upon any defendant within the United States, which fee is to be deposited to the special
110 revenue account established in this section for the operation of the office of the Secretary of State,
111 \$5;

112 (F) For shipping and handling expenses for execution of service of process upon any
113 defendant outside the United States by registered mail, which fee is to be deposited to the special
114 revenue account established in this section for the operation of the office of the Secretary of State,
115 \$15;

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

118 (A) For any search of archival records maintained at sites other than the office of the
119 Secretary of State no less than, \$10;

120 (B) For searches of archival records maintained at sites other than the office of the
121 Secretary of State which require more than one hour, for each hour or fraction of an hour
122 consumed in making a search, \$10;

123 (C) For any search of records maintained on site for the purpose of obtaining copies of

124 documents or printouts of data, \$5;

125 (D) For any search of records maintained in electronic format which requires special
126 programming to be performed by the state information services agency or other vendor any actual
127 cost, but not less than, \$25;

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

130 (F) For recording any paper for which no specific fee is prescribed, \$5.

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

133 (A) For a copy of any paper or printout of electronic data, if one sheet, \$1;

134 (B) For each sheet after the first, 50 cents;

135 (C) For sending the copies or lists by fax transmission, \$5;

136 (D) For producing and providing photocopies of lists, reports, guidelines and other
137 documents produced in multiple copies for general public use, a publication price to be established
138 by the Secretary of State at a rate approximating \$2 plus 10 cents per page and rounded to the
139 nearest dollar;

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

143 (b) The Secretary of State may propose rules for legislative approval, in accordance with
144 the provisions of §29A-3-1 *et seq.* of this code, for charges for online electronic access to
145 database information or other information maintained by the Secretary of State.

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

148 (d) The records maintained by the Secretary of State are prepared and indexed at the
149 expense of the state and those records shall not be obtained for commercial resale without the

150 written agreement of the state to a contract including reimbursement to the state for each instance
151 of resale.

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

155 (f) There is hereby continued in the State Treasury a special revenue account to be known
156 as the Service Fees and Collections Account. Expenditures from the account shall be used for the
157 operation of the office of the Secretary of State and are not authorized from collections, but are to
158 be made only in accordance with appropriation by the Legislature and in accordance with the
159 provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in §5A-
160 2-1 *et seq.* of this code. Notwithstanding any other provision of this code to the contrary, except as
161 provided in subsection (h) of this section and §59-1-2a of this code, one half of all the fees and
162 service charges established in the following sections and for the following purposes shall be
163 deposited by the Secretary of State or other collecting agency to that special revenue account and
164 used for the operation of the office of the Secretary of State:

165 (1) The annual attorney-in-fact fee for corporations and limited partnerships established in
166 §11-12C-5 of this code;

167 (2) The fees received for the sale of the State Register, Code of State Rules and other
168 copies established by rule and authorized by §29A-2-7 of this code;

169 (3) The registration fees, late fees and legal settlements charged for registration and
170 enforcement of the charitable organizations and professional solicitations established in §29-19-5,
171 §29-19-9, and §29-19-15b this code;

172 (4) The annual attorney-in-fact fee for limited liability companies as designated in §31B-1-
173 108 of this code and the annual report fee established in §31B-2-211 of this code: *Provided*, That
174 after June 30, 2008, the annual report fees designated in §31B-1-108 of this code shall upon
175 collection, be deposited in the General Administrative Fees Account described in subsection (h) of

176 this section;

177 (5) The filing fees and search and copying fees for uniform commercial code transactions
178 established by §46-9-525 of this code;

179 (6) The annual attorney-in-fact fee for licensed insurers established in §33-4-12 of this
180 code;

181 (7) The fees for the application and record maintenance of all notaries public established
182 by §39-4-20 of this code;

183 (8) The fees for registering credit service organizations as established by §46A-6C-5 of
184 this code;

185 (9) The fees for registering and renewing a West Virginia limited liability partnership as
186 established by §47B-10-1 of this code;

187 (10) The filing fees for the registration and renewal of trademarks and service marks
188 established in §47-2-17 of this code;

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

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

193 (g) Any balance in the service fees and collections account established by this section
194 which exceeds \$500,000 as of June 30, 2003, and each year thereafter, shall be expired to the
195 state fund, General Revenue Fund

196 (h)(1) Effective July 1, 2008, there is hereby created in the State Treasury a special
197 revenue account to be known as the General Administrative Fees Account. Expenditures from the
198 account shall be used for the operation of the office of the Secretary of State and are not
199 authorized from collections, but are to be made only in accordance with appropriation by the
200 Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon the
201 fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code: *Provided*, That for the fiscal

202 year ending June 30, 2009, expenditures are authorized from collections rather than pursuant to
203 an appropriation by the Legislature. Any balance in the account at the end of each fiscal year shall
204 not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided
205 by this subsection.

206 (2) After June 30, 2008, all the fees and service charges established in §59-1-2a of this
207 code for the following purposes shall be collected and deposited by the Secretary of State or other
208 collecting agency in the general administrative fees account and used for the operation of the
209 office of the Secretary of State:

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

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

215 (C) The fees for the purchase of data and updates related to the state's Business
216 Organizations Database described in §59-1-2a of this code.

217 (i) There is continued in the office of the Secretary of State a noninterest-bearing, escrow
218 account to be known as the Prepaid Fees and Services Account. This account shall be for the
219 purpose of allowing customers of the Secretary of State to prepay for services, with payment to be
220 held in escrow until services are rendered. Payments deposited in the account shall remain in the
221 account until services are rendered by the Secretary of State and at that time the fees will be
222 reallocated to the appropriate general or special revenue accounts. There shall be no fee charged
223 by the Secretary of State to the customer for the use of this account and the customer may request
224 the return of any moneys maintained in the account at any time without penalty. The assets of the
225 prepaid fees and services account do not constitute public funds of the state and are available
226 solely for carrying out the purposes of this section.

227 (j) A veteran-owned business, as defined in §59-1-2a(a)(13), commenced on or after July

228 1, 2015, or an active-duty member business, as defined in §59-1-2a(a)(13), commenced on or
229 after July 1, 2021, is exempt from paying the fees prescribed in paragraphs (a)(1)(A), (a)(1)(B),
230 (a)(1)(C), (a)(1)(D), (a)(1)(E), (a)(1)(F), and(a)(1)(G) of this section.

231 (k) Notwithstanding any other provisions of this article, after July 1, 2017, the Secretary of
232 State may offer a fee for expedited services which shall not exceed, \$500.

233 (l) The fees provided for in this section shall remain in effect until such time as the
234 Legislature has approved rules promulgated by the Secretary of State, in accordance with the
235 provisions of §29A-3-1 *et seq.* of this code, establishing a schedule of fees for services.

NOTE: The purpose of this bill is to allow for the creation of protected series under a parent limited liability company.

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