

1 **H. B. 3222**

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3 (By Delegate Manypenny and Guthrie)
4 (By Request of the Secretary of State)
5 [Introduced February 21, 2011; referred to the
6 Committee on Government Organization then Finance.]
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10 A BILL to amend and reenact §59-1-2a of the Code of West Virginia,
11 1931, as amended, relating to authorizing the Secretary of
12 State to charge fees for current electronic and online
13 services.

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

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

17 **ARTICLE 1. FEES AND ALLOWANCES.**

18 **§59-1-2a. Annual business fees to be paid to the Secretary of**
19 **State; filing of annual reports; purchase of data.**

20 (a) *Definitions.* -- As used in this section:

21 (1) "Annual report fee" means the fee described in subsection
22 (c) of this article that is to be paid to the Secretary of State
23 each year by corporations, limited partnerships, domestic limited
24 liability companies and foreign limited liability companies. After
25 June 30, 2008, any reference in this code to a fee paid to the
26 Secretary of State for services as a statutory attorney in fact

1 shall mean the annual report fee described in this section.

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

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

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

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

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

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

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

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

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

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

17 (b) *Required payment of annual report fee and filing of annual*
18 *report.* -- After June 30, 2008, no corporation, limited
19 partnership, domestic limited liability company or foreign limited
20 liability company may engage in any business activity in this state
21 without paying the annual report fee and filing the annual report
22 as required by this section.

23 (c) *Annual report fee.* -- After June 30, 2008, each
24 corporation, limited partnership, domestic limited liability
25 company and foreign limited liability company engaged in or
26 authorized to do business in this state shall pay an annual report

1 fee of \$25 for the services of the Secretary of State as attorney-
2 in-fact for the corporation, limited partnership, domestic limited
3 liability company or foreign limited liability company, and for
4 such other administrative services as may be imposed by law upon
5 the Secretary of State. The fee is due and payable each year after
6 the initial registration of the corporation, limited partnership,
7 domestic limited liability company or foreign limited liability
8 company with the annual report described in subsection (d) of this
9 section on or before the dates specified in subsection (e) of this
10 section. The fee is due and payable each year with the annual
11 report from corporations, limited partnerships, domestic limited
12 liability companies and foreign limited liability companies that
13 paid the registration fee prior to July 1, 2008, on or before the
14 dates specified in subsection (e) of this section. The annual
15 report fees received by the Secretary of State pursuant to the
16 provisions of this subsection shall be deposited by the Secretary
17 of State in the general administrative fees account established by
18 section two of this article.

19 (d) *Annual report.* -- (1) After the June 30, 2008, each
20 corporation, limited partnership, domestic limited liability
21 company and foreign limited liability company engaged in or
22 authorized to do business in this state shall file an annual
23 report. The report is due each year after the initial registration
24 of the corporation, limited partnership, domestic limited liability
25 company or foreign limited liability company with the annual report
26 fee described in subsection (c) of this section on or before the

1 dates specified in subsection (e) of this section. The report is
2 due each year from corporations, limited partnerships, domestic
3 limited liability companies and foreign limited liability companies
4 that paid the registration fee prior to July 30, on or before the
5 dates specified in subsection (e) of this section.

6 (2) (A) The annual report shall be filed with the Secretary of
7 State on forms provided by the Secretary of State for that purpose.
8 The annual report shall, in the case of corporations, contain: (i)
9 The address of the corporation's principal office; (ii) the names
10 and mailing addresses of its officers and directors; (iii) the name
11 and mailing address of the person on whom notice of process may be
12 served; (iv) the name and address of the corporation's parent
13 corporation and of each subsidiary of the corporation licensed to
14 do business in this state; (v) in the case of limited partnerships
15 domestic limited liability companies and foreign limited liability
16 companies, similar information with respect to their principal or
17 controlling interests as determined by the Secretary of State or
18 otherwise required by law to be reported to the Secretary of State;
19 (vi) the county or county code in which the principal office
20 address or mailing address of the company is located; (vii)
21 business class code; and (viii) any other information the Secretary
22 of State considers appropriate.

23 (B) Notwithstanding any other provision of law to the
24 contrary, the Secretary of State shall, upon request of any person,
25 disclose, with respect to corporations: (i) The address of the
26 corporation's principal office; (ii) the names and addresses of its

1 officers and directors; (iii) the name and mailing address of the
2 person on whom notice of process may be served; (iv) the name and
3 address of each subsidiary of the corporation and the corporation's
4 parent corporation; (v) the county or county code in which the
5 principal office address or mailing address of the company is
6 located; and (vi) the business class code. The Secretary of State
7 shall provide similar information with respect to information in
8 its possession relating to limited partnerships domestic limited
9 liability companies and foreign limited liability companies,
10 similar information with respect to their principal or controlling
11 interests.

12 (e) *Annual reports and fees due July 1 or April 1.* -- After
13 June 30, 2008, each corporation and limited partnership shall file
14 with the Secretary of State the annual report and pay the annual
15 report fee by July 1, 2009, and each year thereafter, and each
16 limited liability company and foreign limited liability shall file
17 with the Secretary of State the annual report and pay the annual
18 report fee by April 1, 2009, and each year thereafter: *Provided,*
19 That each corporation and limited partnership that paid the
20 registration fee prior to July 1, 2008 shall file the annual report
21 and pay the annual report fee by July 1, 2008, and each year
22 thereafter.

23 (f) *Deposit of fees.* -- The annual report fees received by the
24 Secretary of State pursuant to the provisions of this section shall
25 be deposited by the Secretary of State in the general
26 administrative fees account established by section two, article

1 one, chapter fifty-nine of this code.

2 (g) *Duty to pay.* -- It shall be the duty of each corporation,
3 limited partnership, limited liability company and foreign limited
4 liability company required to pay the annual report fees imposed
5 under this article, to remit them with a properly completed annual
6 report to the Secretary of State, and if it fails to do so it shall
7 be subject to the penalties prescribed in subsection (h) of this
8 article.

9 (h) *Penalties.* -- (1) The following penalties shall be in
10 addition to any other penalties and remedies available elsewhere in
11 this code:

12 (A) *Administrative penalty.* -- The Secretary of State shall
13 impose upon each corporation, limited partnership, limited
14 liability company and foreign limited liability company delinquent
15 in the payment of an annual report fee or the filing of an annual
16 report an administrative penalty in the amount of \$100 per year for
17 each year or portion thereof in which the report which is due is
18 not filed or the fees which are owed are not paid. This penalty
19 shall be assessed and collected in the same manner as the fees
20 imposed under this article.

21 (B) *Criminal penalty.* -- It is a misdemeanor for a each
22 corporation, limited partnership, limited liability company or
23 foreign limited liability company to conduct business for more than
24 thirty consecutive calendar days without paying in full the amount
25 of annual report fees which are due or without filing the annual
26 report which is due. Upon conviction, each officer, agent or

1 employee shall be fined not more than one thousand. Each day or
2 portion thereof, after the initial period of thirty consecutive
3 days, during which business is conducted without paying in full the
4 amount of fees which are due, or without filing the report which is
5 due, shall constitute a separate punishable criminal offense.
6 Failure to file shall constitute a separate punishable criminal
7 offense and failure to pay shall constitute a separate punishable
8 criminal offense.

9 (2) All penalties collected under this subsection shall be
10 deposited into General Revenue Fund of the State Treasury in the
11 manner provided by law.

12 (i) *Reports to Tax Commissioner; suspension, cancellation or*
13 *withholding of business registration certificate.* -- (1) The
14 Secretary of State shall, within twenty days after the close of
15 each month, make a report to the Tax Commissioner for the preceding
16 month, in which he or she shall set out the name of every business
17 entity to which he or she issued a certificate to conduct business
18 in the State of West Virginia during that month. The report shall
19 set out the names and addresses all corporations, limited
20 partnerships, limited liability companies and foreign limited
21 liability companies to which he or she issued certificates of
22 change of name or of change of location of principal office,
23 dissolution, withdrawal or merger. If the Secretary of State fails
24 to make the report, it shall be the duty of the Tax Commissioner to
25 report such failure to the Governor. A writ of mandamus shall lie
26 for correction of such failure.

1 (2) Notwithstanding any other provisions of this code to the
2 contrary, upon receipt of notice from the Secretary of State that
3 a corporation, limited partnership, limited liability company and
4 foreign limited liability company is more than thirty days
5 delinquent in the payment of annual report fees or in the filing of
6 an annual report required by this section, the Tax Commissioner may
7 suspend, cancel or withhold a business registration certificate
8 issued to or applied for by the delinquent corporation, limited
9 partnership, limited liability company or foreign limited liability
10 company until the same is paid and filed in the manner provided for
11 the suspension, cancellation or withholding of business
12 registration certificates for other reasons under article twelve,
13 chapter eleven of this code.

14 (j) *Purchase of data.* -- The Secretary of State will provide
15 electronically, for purchase, any data maintained in the Secretary
16 of State's Business Organizations Database. For the electronic
17 purchase of the entire Business Organizations Database, the cost is
18 \$12,000. For the purchase of the monthly updates of the Business
19 Organizations Database, the cost is \$1000 per month. For the
20 purchase of individual data, the cost is \$25 for each initial
21 request plus \$0.05 per record. The fees received by the Secretary
22 of State pursuant to the provisions of this subsection shall be
23 deposited by the Secretary of State in the general administrative
24 fees account established by section two, article one, chapter
25 fifty-nine of this code.

26 (k) *Rules.* -- The Secretary of State may propose legislative

1 rules for promulgation pursuant to article three, chapter twenty-
2 nine-a of this code to implement the provisions of this article,
3 and may, pending promulgation of those rules, promulgate emergency
4 rules pursuant to those provisions for those purposes.

5 (1) The Secretary of State is authorized to charge a service
6 fee per transaction, as contracted with the state portal provider,
7 to all customers who purchase specific data through an online
8 website service.

NOTE: The purpose of this bill is to allow the Secretary of State to charge fees for current electronic and online services.

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