

1 **H. B. 3234**

2
3 (By Delegates Boggs, Cann, Kominar, Manypenny, Morgan,
4 Perry, Shaver, Swartzmiller and Varner)

5 [Introduced February 21, 2011; referred to the
6 Committee on Government Organization.]

7 **FISCAL**
8 **NOTE**

9
10 A BILL to amend and reenact §59-1-2a of the Code of West Virginia,
11 1931, as amended, relating to requiring the Secretary of
12 State, between January 15 and February 15 each year, to notify
13 every corporation, limited partnership, limited liability
14 company and foreign limited liability company currently
15 registered to do business in this state of their duty to pay
16 an annual report fee.

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

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

20 **ARTICLE 1. FEES AND ALLOWANCES.**

21 **§59-1-2a. Annual business fees to be paid to the Secretary of**
22 **State; filing of annual reports; purchase of data.**

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

24 (1) "Annual report fee" means the fee described in subsection

1 (c) of this ~~article~~ section that is to be paid to the Secretary of
2 State each year by corporations, limited partnerships, domestic
3 limited liability companies and foreign limited liability
4 companies. ~~After the thirtieth day of June, two thousand eight,~~
5 Any reference in this code to a fee paid to the Secretary of State
6 for services as a statutory attorney in fact ~~shall mean~~ means the
7 annual report fee described in this section.

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

20 (3) "Corporation" means a "domestic corporation", a "foreign
21 corporation" or a "nonprofit corporation".

22 (4) "Deliver or delivery" means any method of delivery used in
23 conventional commercial practice, including, but not limited to,
24 delivery by hand, mail, commercial delivery and electronic

1 transmission.

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

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

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

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

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

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

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

1 (b) *Required payment of annual report fee and filing of annual*
2 *report.* -- ~~After the thirtieth day of June, two thousand eight,~~ No
3 corporation, limited partnership, domestic limited liability
4 company or foreign limited liability company may engage in any
5 business activity in this state without paying the annual report
6 fee and filing the annual report as required by this section.

7 (c) *Annual report fee.* -- ~~After the thirtieth day of June, two~~
8 ~~thousand eight,~~ Each corporation, limited partnership, domestic
9 limited liability company and foreign limited liability company
10 engaged in or authorized to do business in this state shall pay an
11 annual report fee of \$25 for the services of the Secretary of State
12 as attorney-in-fact for the corporation, limited partnership,
13 domestic limited liability company or foreign limited liability
14 company, and for ~~such~~ other administrative services as may be
15 imposed by law upon the Secretary of State. The fee is due and
16 payable each year after the initial registration of the
17 corporation, limited partnership, domestic limited liability
18 company or foreign limited liability company with the annual report
19 described in subsection (d) of this section on or before the dates
20 specified in subsection (e) of this section. The fee is due and
21 payable each year with the annual report from corporations, limited
22 partnerships, domestic limited liability companies and foreign
23 limited liability companies that paid the registration fee prior to
24 July 1, 2008, on or before the dates specified in subsection (e) of

1 this section. The annual report fees received by the Secretary of
2 State pursuant to the provisions of this subsection shall be
3 deposited by the Secretary of State in the General Administrative
4 Fees Account established by section two of this article.

5 (d) *Annual report.* -- (1) ~~After the thirtieth day of June, two~~
6 ~~thousand eight,~~ Each corporation, limited partnership, domestic
7 limited liability company and foreign limited liability company
8 engaged in or authorized to do business in this state shall file an
9 annual report. The report is due each year after the initial
10 registration of the corporation, limited partnership, domestic
11 limited liability company or foreign limited liability company with
12 the annual report fee described in subsection (c) of this section
13 on or before the dates specified in subsection (e) of this section.
14 The report is due each year from corporations, limited
15 partnerships, domestic limited liability companies and foreign
16 limited liability companies that paid the registration fee prior to
17 July 1, 2008, on or before the dates specified in subsection (e) of
18 this section.

19 (2) (A) The annual report shall be filed with the Secretary of
20 State on forms provided by the Secretary of State for that purpose.
21 The annual report shall, in the case of corporations, contain: (i)
22 The address of the corporation's principal office; (ii) the names
23 and mailing addresses of its officers and directors; (iii) the name
24 and mailing address of the person on whom notice of process may be

1 served; (iv) the name and address of the corporation's parent
2 corporation and of each subsidiary of the corporation licensed to
3 do business in this state; (v) in the case of limited partnerships
4 domestic limited liability companies and foreign limited liability
5 companies, similar information with respect to their principal or
6 controlling interests as determined by the Secretary of State or
7 otherwise required by law to be reported to the Secretary of State;
8 (vi) the county or county code in which the principal office
9 address or mailing address of the company is located; (vii)
10 business class code; and (viii) any other information the Secretary
11 of State considers appropriate.

12 (B) Notwithstanding any other provision of law to the
13 contrary, the Secretary of State shall, upon request of any person,
14 disclose, with respect to corporations: (i) The address of the
15 corporation's principal office; (ii) the names and addresses of its
16 officers and directors; (iii) the name and mailing address of the
17 person on whom notice of process may be served; (iv) the name and
18 address of each subsidiary of the corporation and the corporation's
19 parent corporation; (v) the county or county code in which the
20 principal office address or mailing address of the company is
21 located; and (vi) the business class code. The Secretary of State
22 shall provide similar information with respect to information in
23 its possession relating to limited partnerships domestic limited
24 liability companies and foreign limited liability companies,

1 similar information with respect to their principal or controlling
2 interests.

3 (e) *Annual reports and fees due July 1 or April 1.* -- ~~After~~
4 ~~the thirtieth day of June, two thousand eight,~~ Each corporation and
5 limited partnership shall file with the Secretary of State the
6 annual report and pay the annual report fee by July 1, 2009, and
7 each year thereafter, and each limited liability company and
8 foreign limited liability shall file with the Secretary of State
9 the annual report and pay the annual report fee by April 1, 2009,
10 and each year thereafter: *Provided,* That each corporation and
11 limited partnership that paid the registration fee prior to July 1,
12 2008, shall file the annual report and pay the annual report fee by
13 July 1, 2008, and each year thereafter.

14 (f) Notification requirement. -- It is the duty of the
15 Secretary of State, between January 15 and February 15 each year,
16 to notify every corporation, limited partnership, limited liability
17 company and foreign limited liability company currently registered
18 to do business in this state which is required to pay the annual
19 report fee imposed by this section, of the time of payment of the
20 fee and the amount of the fee.

21 ~~(f)~~ (g) Deposit of fees. -- The annual report fees received
22 by the Secretary of State pursuant to the provisions of this
23 section shall be deposited by the Secretary of State in the General
24 Administrative Fees Account established by section two of this

1 article. ~~one, chapter fifty-nine of this code~~

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

9 ~~(h)~~ (i) *Penalties.* -- (1) The following penalties ~~shall be~~ are
10 in addition to any other penalties and remedies available elsewhere
11 in 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~~ of a year in which the report which is
18 due is not filed or the fees which are owed are not paid. This
19 penalty shall be assessed and collected in the same manner as the
20 fees imposed under this ~~article~~ section.

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

1 of annual report fees which are due or without filing the annual
2 report which is due. Upon conviction, each officer, agent or
3 employee shall be fined not more than \$ 1,000. Each day or portion
4 thereof, after the initial period of thirty consecutive days, during
5 which business is conducted without paying in full the amount of
6 fees which are due, or without filing the report which is due, ~~shall~~
7 ~~constitute~~ is a separate punishable criminal offense. Failure to
8 file ~~shall constitute~~ is a separate punishable criminal offense and
9 failure to pay ~~shall constitute~~ is a separate punishable criminal
10 offense.

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

14 ~~(i)~~ (j) *Reports to Tax Commissioner; suspension, cancellation*
15 *or withholding of business registration certificate.* -- (1) The
16 Secretary of State shall, within twenty days after the close of each
17 month, make a report to the Tax Commissioner for the preceding
18 month, in which he or she shall set out the name of every business
19 entity to which he or she issued a certificate to conduct business
20 in the State of West Virginia during that month. The report shall
21 set out the names and addresses of all corporations, limited
22 partnerships, limited liability companies and foreign limited
23 liability companies to which he or she issued certificates of change
24 of name or of change of location of principal office, dissolution,

1 withdrawal or merger. If the Secretary of State fails to make the
2 report, it ~~shall be~~ is the duty of the Tax Commissioner to report
3 ~~such~~ the failure to the Governor. A writ of mandamus ~~shall lie~~ lies
4 for correction of ~~such~~ the failure.

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

18 ~~(j)~~ (k) *Purchase of data.* -- The Secretary of State ~~will~~ shall
19 provide electronically, for purchase, any data maintained in the
20 Secretary of State's Business Organizations Database. For the
21 electronic purchase of the entire Business Organizations Database,
22 the cost is \$12,000. For the purchase of the monthly updates of the
23 Business Organizations Database, the cost is \$1,000 per month. The
24 fees received by the Secretary of State pursuant to the provisions

1 of this subsection shall be deposited by the Secretary of State in
2 the general Administrative Fees Account established by section two
3 of this article. ~~one, chapter fifty-nine of this code~~

4 ~~(k)~~ (l) Rules. -- The Secretary of State may propose
5 legislative rules for promulgation pursuant to article three,
6 chapter twenty-nine-a of this code to implement the provisions of
7 this ~~article~~ section, and may, pending promulgation of those rules,
8 promulgate emergency rules pursuant to those provisions for those
9 purposes.

NOTE: The purpose of this bill is to require the Secretary of State to notify every corporation, limited partnership, limited liability company and foreign limited liability company registered to do business of their duty to pay an annual report fee, between January 15 and February 15 each year.

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