

**Senate Bill No. 591**

(By Senators Miller and Williams)

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[Introduced February 21, 2011; referred to the Committee on the  
Judiciary; and then to the Committee on Finance.]

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A BILL to amend and reenact §59-1-2a of the Code of West Virginia,  
1931, as amended, relating to authorizing the Secretary of  
State to charge fees for current electronic and online  
services.

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

That §59-1-2a of the Code of West Virginia, 1931, as amended,  
be amended and 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.**

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

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

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

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

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

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

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

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

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

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

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

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

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

21           (c) *Annual report fee.* -- After June 30, 2008, each  
22 corporation, limited partnership, domestic limited liability  
23 company and foreign limited liability company engaged in or  
24 authorized to do business in this state shall pay an annual report  
25 fee of \$25 for the services of the Secretary of State as attorney-  
26 in-fact for the corporation, limited partnership, domestic limited  
27 liability company or foreign limited liability company, and for

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

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

1 dates specified in subsection (e) of this section.

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

19 (B) Notwithstanding any other provision of law to the  
20 contrary, the Secretary of State shall, upon request of any person,  
21 disclose, with respect to corporations: (i) The address of the  
22 corporation's principal office; (ii) the names and addresses of its  
23 officers and directors; (iii) the name and mailing address of the  
24 person on whom notice of process may be served; (iv) the name and  
25 address of each subsidiary of the corporation and the corporation's  
26 parent corporation; (v) the county or county code in which the  
27 principal office address or mailing address of the company is

1 located; and (vi) the business class code. The Secretary of State  
2 shall provide similar information with respect to information in  
3 its possession relating to limited partnerships domestic limited  
4 liability companies and foreign limited liability companies,  
5 similar information with respect to their principal or controlling  
6 interests.

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

18 (f) *Deposit of fees.* -- The annual report fees received by the  
19 Secretary of State pursuant to the provisions of this section shall  
20 be deposited by the Secretary of State in the general  
21 administrative fees account established by section two, article  
22 one, chapter fifty-nine of this code.

23 (g) *Duty to pay.* -- It shall be the duty of each corporation,  
24 limited partnership, limited liability company and foreign limited  
25 liability company required to pay the annual report fees imposed  
26 under this article, to remit them with a properly completed annual  
27 report to the Secretary of State, and if it fails to do so it shall

1 be subject to the penalties prescribed in subsection (h) of this  
2 article.

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

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

15 (B) *Criminal penalty.* -- It is a misdemeanor for a each  
16 corporation, limited partnership, limited liability company or  
17 foreign limited liability company to conduct business for more than  
18 thirty consecutive calendar days without paying in full the amount  
19 of annual report fees which are due or without filing the annual  
20 report which is due. Upon conviction, each officer, agent or  
21 employee shall be fined not more than one thousand. Each day or  
22 portion thereof, after the initial period of thirty consecutive  
23 days, during which business is conducted without paying in full the  
24 amount of fees which are due, or without filing the report which is  
25 due, shall constitute a separate punishable criminal offense.  
26 Failure to file shall constitute a separate punishable criminal  
27 offense and failure to pay shall constitute a separate punishable

1 criminal offense.

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

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

20 (2) Notwithstanding any other provisions of this code to the  
21 contrary, upon receipt of notice from the Secretary of State that  
22 a corporation, limited partnership, limited liability company and  
23 foreign limited liability company is more than thirty days  
24 delinquent in the payment of annual report fees or in the filing of  
25 an annual report required by this section, the Tax Commissioner may  
26 suspend, cancel or withhold a business registration certificate  
27 issued to or applied for by the delinquent corporation, limited



1 partnership, limited liability company or foreign limited liability  
2 company until the same is paid and filed in the manner provided for  
3 the suspension, cancellation or withholding of business  
4 registration certificates for other reasons under article twelve,  
5 chapter eleven of this code.

6 (j) *Purchase of data.* -- The Secretary of State will provide  
7 electronically, for purchase, any data maintained in the Secretary  
8 of State's Business Organizations Database. For the electronic  
9 purchase of the entire Business Organizations Database, the cost is  
10 \$12,000. For the purchase of the monthly updates of the Business  
11 Organizations Database, the cost is \$1000 per month. For the  
12 purchase of individual data, the cost is \$25 for each initial  
13 request plus \$0.05 per record. The fees received by the Secretary  
14 of State pursuant to the provisions of this subsection shall be  
15 deposited by the Secretary of State in the general administrative  
16 fees account established by section two, article one, chapter  
17 fifty-nine of this code.

18 (k) *Rules.* -- The Secretary of State may propose legislative  
19 rules for promulgation pursuant to article three, chapter twenty-  
20 nine-a of this code to implement the provisions of this article,  
21 and may, pending promulgation of those rules, promulgate emergency  
22 rules pursuant to those provisions for those purposes.

23 (l) The Secretary of State is authorized to charge a service  
24 fee per transaction, as contracted with the state portal provider,  
25 to all customers who purchase specific data through an online  
26 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.