

1 **H. B. 4595**

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3 (By Delegates Morgan and White)
4 [By Request of the Secretary of State]
5 [Introduced February 17, 2012; referred to the
6 Committee on Government Organization then Finance.]

**FISCAL
NOTE**

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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 annual business fees paid to the
12 Secretary of State; clarifying that limited liability
13 companies, foreign limited liability companies and foreign
14 corporations are required to file annual reports; eliminating
15 criminal penalties; changing a \$100 penalty to a \$50 late fee
16 for delinquent annual reports; providing a \$25 late fee for
17 delinquent annual reports for nonprofit corporations;
18 requiring the Secretary of State to deposit all late fees
19 collected in its general administrative fees account;
20 authorizing the Secretary of State to charge a fee for online
21 purchases of data or conducting transactions online; and
22 authorizing rule making.

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

24 That §59-1-2a of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted to read as follows:

2 **ARTICLE 1. FEES AND ALLOWANCES.**

3 **§59-1-2a. Annual business fees to be paid to the Secretary of**
4 **State; filing of annual reports; purchase of data.**

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

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

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

1 activity of conducting affairs in interstate commerce when activity
2 occurs in this state.

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

5 (4) "Deliver or delivery" means any method of delivery used in
6 conventional commercial practice, including, but not limited to,
7 delivery by hand, mail, commercial delivery and electronic
8 transmission.

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

12 (6) "Domestic limited liability company" means a limited
13 liability company which is not a foreign limited liability company
14 under or subject to ~~the provisions of~~ chapter thirty-one-b of this
15 code.

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

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

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

23 (10) "Nonprofit corporation" means a nonprofit corporation as
24 defined by section one hundred fifty, article one, chapter thirty-

1 one-e of this code.

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

8 (b) *Required payment of annual report fee and filing of annual*
9 *report.* -- After June 30, 2008, no corporation, limited
10 partnership, domestic limited liability company or foreign limited
11 liability company may engage in any business activity in this state
12 without paying the annual report fee and filing the annual report
13 as required by this section.

14 (c) *Annual report fee.* -- After June 30, 2008, each
15 corporation, limited partnership, domestic limited liability
16 company and foreign limited liability company engaged in or
17 authorized to do business in this state shall pay an annual report
18 fee of \$25 for the services of the Secretary of State as attorney-
19 in-fact for the corporation, limited partnership, domestic limited
20 liability company or foreign limited liability company, and for
21 such other administrative services as may be imposed by law upon
22 the Secretary of State. The fee is due and payable each year after
23 the initial registration of the corporation, limited partnership,
24 domestic limited liability company or foreign limited liability

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

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

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

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

1 parent corporation; (v) the county or county code in which the
2 principal office address or mailing address of the company is
3 located; and (vi) the business class code. The Secretary of State
4 shall provide similar information with respect to information in
5 its possession relating to limited partnerships domestic limited
6 liability companies and foreign limited liability companies,
7 similar information with respect to their principal or controlling
8 interests.

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

22 (f) *Deposit of fees.* -- The annual report fees received by
23 the Secretary of State pursuant to ~~the provisions of~~ this section
24 shall be deposited by the Secretary of State in the general

1 administrative fees account established by section two, article
2 one, chapter fifty-nine of this code.

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

10 (h) ~~Penalties~~ Late fees. -- (1) The following ~~penalties~~ late
11 fees shall be in addition to any other penalties and remedies
12 available elsewhere in this code:

13 (A) *Administrative ~~penalty~~ late fee.* -- The Secretary of State
14 shall ~~impose~~ assess upon each corporation, limited partnership,
15 limited liability company and foreign limited liability company
16 delinquent in the payment of an annual report fee or the filing of
17 an annual report an administrative ~~penalty~~ late fee in the amount
18 of ~~\$100~~ \$50. ~~per year for each year or portion thereof in which the~~
19 ~~report which is due is not filed or the fees which are owed are not~~
20 ~~paid.~~ ~~This penalty shall be assessed and collected in the same~~
21 ~~manner as the fees imposed under this article.~~

22 ~~(B) *Criminal penalty.* -- It is a misdemeanor for a each~~
23 ~~corporation, limited partnership, limited liability company or~~
24 ~~foreign limited liability company to conduct business for more than~~

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

12 (B) Administrative late fees for nonprofit corporations. --
13 The Secretary of State shall assess each nonprofit corporation
14 delinquent in the payment of an annual report fee or the filing of
15 an annual report an administrative late fee in the amount of \$25.

16 (2) All ~~penalties~~ fees collected under this subsection shall
17 be deposited ~~into General Revenue Fund of the State Treasury in the~~
18 ~~manner provided by law~~ by the Secretary of State into the general
19 administrative fees account established by section two of this
20 article.

21 (i) *Reports to Tax Commissioner; suspension, cancellation or*
22 *withholding of business registration certificate. -- (1) The*
23 *Secretary of State shall, within twenty days after the close of*
24 *each month, make a report to the Tax Commissioner for the preceding*

1 month, in which he or she shall set out the name of every business
2 entity to which he or she issued a certificate to conduct business
3 in the State of West Virginia during that month. The report shall
4 set out the names and addresses all corporations, limited
5 partnerships, limited liability companies and foreign limited
6 liability companies to which he or she issued certificates of
7 change of name or of change of location of principal office,
8 dissolution, withdrawal or merger. If the Secretary of State fails
9 to make the report, it shall be the duty of the Tax Commissioner to
10 report such failure to the Governor. A writ of mandamus shall lie
11 for correction of such failure.

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

1 (j) *Purchase of data.* -- The Secretary of State will provide
2 electronically, for purchase, any data maintained in the Secretary
3 of State's Business Organizations Database. For the electronic
4 purchase of the entire Business Organizations Database, the cost is
5 \$12,000. For the purchase of the monthly updates of the Business
6 Organizations Database, the cost is \$1,000 per month. The fees
7 received by the Secretary of State pursuant to ~~the provisions of~~
8 this subsection shall be deposited by the Secretary of State in the
9 general administrative fees account established by section two,
10 article one, chapter fifty-nine of this code.

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

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

NOTE: The purpose of this bill is to clarify that limited liability companies, foreign limited liability companies and foreign corporations are required to file annual reports. The bill eliminates criminal penalties. The bill changes a \$100 penalty to a \$50 late fee for delinquent annual reports. The bill provides a

\$25 late fee for delinquent annual reports for nonprofit corporations. The bill requires the Secretary of State to deposit all late fees collected in its general administrative fees account instead of the state's General Revenue Fund. The bill authorizes the Secretary of State to charge a fee for online purchases of data or conducting transactions online. The bill authorizes rule making.

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

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Secretary of State.