

H. B. 4607

(By Delegates White, Morgan and Manypenny)

(By request of the Secretary of State)

[Introduced February 17, 2012; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A Bill to amend and reenact §31D-15-1532 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §31D-15-1533; to amend and reenact §31E-14-1432 of said code; and to amend and reenact §59-1-2 of said code, all relating to providing procedures for foreign profit and foreign nonprofit corporations to be reinstated following administrative revocation; providing for appeals; and establishing a reinstatement fee for domestic and foreign limited liability companies and domestic and foreign corporations after administrative dissolutions.

Be it enacted by the Legislature of West Virginia:

That §31D-15-1532 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by

1 adding thereto a new section, designated §31D-15-1533; that
2 §31E-14-1432 of said code be amended and reenacted; and that
3 §59-1-2 of said code be amended and reenacted, all to read as
4 follows:

5 **CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.**

6 **ARTICLE 15. FOREIGN CORPORATIONS.**

7 ~~§31D-15-1532. Appeal from revocation.~~

8 ~~(a) A foreign corporation may appeal the Secretary of State's~~
9 ~~revocation of its certificate of authority to the circuit court~~
10 ~~within thirty days after service of the certificate of revocation~~
11 ~~is perfected pursuant to section one thousand five hundred ten of~~
12 ~~this article. The foreign corporation appeals by petitioning the~~
13 ~~circuit court to set aside the revocation and attaching to the~~
14 ~~petition copies of its certificate of authority and the Secretary~~
15 ~~of State's certificate of revocation.~~

16 ~~(b) The circuit court may summarily order the Secretary of~~
17 ~~State to reinstate the certificate of authority or may take any~~
18 ~~other action the circuit court considers appropriate.~~

19 ~~(c) The circuit court's final decision may be appealed as in~~
20 ~~other civil proceedings.~~

21 **§31D-15-1532. Reinstatement following administrative revocation.**

22 (a) A corporation administratively revoked under section one
23 thousand five hundred thirty-one of this article may apply to the

1 Secretary of State for reinstatement within two years after the
2 effective date of revocation. The application must:

3 (1) Recite the name of the corporation and the effective date
4 of its administrative revocation;

5 (2) State that the ground or grounds for revocation have been
6 eliminated;

7 (3) State that the corporation's name satisfies the
8 requirements of section one thousand five hundred-six of this
9 article; and

10 (4) Obtain a certificate from the Tax Commissioner reciting
11 that all taxes owed by the corporation have been paid.

12 (b) If the Secretary of State determines that the application
13 contains the information required by subsection (a) of this section
14 and that the information is correct, he or she shall cancel the
15 certificate of revocation and prepare a certificate of
16 reinstatement that recites his or her determination and the
17 effective date of reinstatement, file the original of the
18 certificate and send notice of the reinstatement to the
19 corporation.

20 (c) When the reinstatement is effective, it relates back to
21 and takes effect as of the effective date of the administrative
22 revocation and the corporation resumes carrying on its business as
23 if the administrative revocation had never occurred.

1 §31D-15-1533. Appeal from denial of reinstatement.

2 (a) If the Secretary of State denies a corporation's
3 application for reinstatement following administrative revocation,
4 he or she shall notify the corporation with written notice that
5 explains the reason or reasons for denial.

6 (b) The corporation may appeal the denial of reinstatement to
7 the circuit court within thirty days after service of the notice of
8 denial is perfected. The corporation appeals by petitioning the
9 circuit court to set aside the revocation and attaching to the
10 petition copies of the Secretary of State's certificate of
11 revocation, the corporation's application for reinstatement and the
12 Secretary of State's notice of denial.

13 (c) The circuit court may summarily order the Secretary of
14 State to reinstate the revoked corporation or may take other action
15 the circuit court considers appropriate.

16 (d) The circuit court's final decision may be appealed as in
17 other civil proceedings.

18 **CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.**

19 **ARTICLE 14. FOREIGN CORPORATIONS.**

20 ~~§31E-14-1432. Appeal from revocation.~~

21 ~~(a) A foreign corporation may appeal the Secretary of State's~~
22 ~~revocation of its certificate of authority to the circuit court~~
23 ~~within thirty days after service of the certificate of revocation~~

1 ~~is perfected pursuant to section one thousand four hundred ten of~~
2 ~~this article. The foreign corporation appeals by petitioning the~~
3 ~~circuit court to set aside the revocation and attaching to the~~
4 ~~petition copies of its certificate of authority and the Secretary~~
5 ~~of State's certificate of revocation.~~

6 ~~(b) The circuit court may summarily order the Secretary of~~
7 ~~State to reinstate the certificate of authority or may take any~~
8 ~~other action the circuit court considers appropriate.~~

9 ~~(c) The circuit court's final decision may be appealed as in~~
10 ~~other civil proceedings.~~

11 **§31E-14-1432. Reinstatement following administrative revocation.**

12 (a) A foreign corporation administratively revoked under
13 section one thousand four hundred thirty-one of this article may
14 apply to the Secretary of State for reinstatement within two years
15 after the effective date of revocation. The application must:

16 (1) Recite the name of the corporation and the effective date
17 of its administrative revocation;

18 (2) State that the ground or grounds for revocation have been
19 eliminated;

20 (3) State that the corporation's name satisfies the
21 requirements of section one thousand four hundred six of this
22 article; and

23 (4) Obtain a certificate from the Tax Commissioner reciting

1 that all taxes owed by the corporation have been paid.

2 (b) If the Secretary of State determines that the application
3 contains the information required by subsection (a) of this section
4 and that the information is correct, he or she shall cancel the
5 certificate of revocation and prepare a certificate of
6 reinstatement that recites his or her determination and the
7 effective date of reinstatement, file the original of the
8 certificate and send notice of the reinstatement to the
9 corporation.

10 (c) When the reinstatement is effective, it relates back to
11 and takes effect as of the effective date of the administrative
12 revocation and the corporation resumes carrying on its business as
13 if the administrative revocation had never occurred.

14 **CHAPTER 59. FEES, ALLOWANCES AND COSTS;**

15 **NEWSPAPERS; LEGAL ADVERTISEMENTS.**

16 **ARTICLE 1. FEES AND ALLOWANCES.**

17 **§59-1-2. Fees to be charged by Secretary of State.**

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

22 (1) For filing, recording, indexing, preserving a record of
23 and issuing a certificate relating to the formation, amendment,

1 change of name, registration of trade name, merger, consolidation,
 2 conversion, renewal, dissolution, termination, cancellation,
 3 withdrawal revocation and reinstatement of business entities
 4 organized within the state, as follows:

5 (A) Articles of incorporation of for-profit
 6 corporation.. . . . \$50.00

7 (B) Articles of incorporation of nonprofit
 8 corporation.. . . . 25.00

9 (C) Articles of organization of limited liability
 10 company.. . . . 100.00

11 (D) Agreement of a general partnership.. . . . 50.00

12 (E) Certificate of a limited partnership.. . . . 100.00

13 (F) Agreement of a voluntary association.. . . . 50.00

14 (G) Articles of organization of a business trust.. . . 50.00

15 (H) Amendment or correction of articles of incorporation,
 16 including change of name or increase of capital stock, in addition
 17 to any applicable license tax.. . . . 25.00

18 (I) Amendment or correction, including change of name, of
 19 articles of organization of business trust, limited liability
 20 partnership, limited liability company or professional limited
 21 liability company or of certificate of limited partnership or
 22 agreement of voluntary association. 25.00

23 (J) Amendment and restatement of articles of incorporation,

1 certificate of limited partnership, agreement of voluntary
2 association or articles of organization of limited liability
3 partnership, limited liability company or professional limited
4 liability company or business trust.. 25.00

5 (K) Registration of trade name, otherwise designated as a true
6 name, fictitious name or D.B.A. (doing business as) name for any
7 domestic business entity as permitted by law. 25.00

8 (L) Articles of merger of two corporations, limited
9 partnerships, limited liability partnerships, limited liability
10 companies or professional limited liability companies, voluntary
11 associations or business trusts.. 25.00

12 (M) Plus for each additional party to the merger in excess of
13 two. 15.00

14 (N) Statement of conversion, when permitted, from one business
15 entity into another business entity, in addition to the cost of
16 filing the appropriate documents to organize the surviving entity
17 25.00

18 (O) Articles of dissolution of a corporation, voluntary
19 association or business trust, or statement of dissolution of a
20 general partnership.. 25.00

21 (P) Revocation of voluntary dissolution of a corporation,
22 voluntary association or business trust.. 15.00

23 (Q) Articles of termination of a limited liability company,

1 cancellation of a limited partnership or statement of withdrawal of
 2 limited liability partnership.. 25.00

3 (R) Reinstatement of a domestic or foreign limited liability
 4 company, ~~or~~ a professional limited liability company or a domestic
 5 or foreign corporation after administrative dissolution.. . 25.00

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

11 (A) Certificate of authority of for-profit corporation
 12 \$100.00

13 (B) Certificate of authority of nonprofit corporation
 14 50.00

15 (C) Certificate of authority of foreign limited liability
 16 companies.. 150.00

17 (D) Certificate of exemption from certificate of authority
 18 25.00

19 (E) Registration of a general partnership. 50.00

20 (F) Registration of a limited partnership. 150.00

21 (G) Registration of a limited liability partnership for
 22 two-year term.. 500.00

23 (H) Registration of a voluntary association. 50.00

1 entity into another business entity, in addition to the cost of
2 filing the appropriate articles or certificate to organize the
3 surviving entity. 25.00

4 (Q) Certificate of withdrawal or cancellation of a
5 corporation, limited partnership, limited liability partnership,
6 limited liability company, voluntary association or business trust
7 25.00

8 Notwithstanding any other provision of this section to the
9 contrary, after June 30, 2008, the fees described in this
10 subdivision that are collected for the issuance of a certificate
11 relating to the initial registration of a corporation, limited
12 partnership, domestic limited liability company or foreign limited
13 liability company shall be deposited in the general administrative
14 fees account established by this section.

15 (3) For receiving, filing and recording a change of the
16 principal or designated office, change of the agent of process
17 and/or change of officers, directors, partners, members or
18 managers, as the case may be, of a corporation, limited
19 partnership, limited liability partnership, limited liability
20 company or other business entity as provided by law.. . . \$15.00

21 (4) For receiving, filing and preserving a reservation of a
22 name for each one hundred twenty days or for any other period in
23 excess of seven days prescribed by law for a corporation, limited

1 partnership, limited liability partnership or limited liability
2 company.. \$15.00

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

5 (A) Certificate of good standing of a domestic or foreign
6 corporation.. \$10.00

7 (B) Certificate of existence of a domestic limited liability
8 company, and certificate of authorization foreign limited liability
9 company.. 10.00

10 (C) Certificate of existence of any business entity, trademark
11 or service mark registered with the Secretary of State. . . 10.00

12 (D) Certified copy of corporate charter or comparable
13 organizing documents for other business entities. 15.00

14 (E) Plus, for each additional amendment, restatement or other
15 additional document.. 5.00

16 (F) Certificate of registration of the name of a foreign
17 corporation, limited liability company, limited partnership or
18 limited liability partnership.. 25.00

19 (G) And for the annual renewal of the name registration
20 10.00

21 (H) Any other certificate not specified in this subdivision
22 10.00

23 (6) For issuing a certificate other than those relating to

1 business entities, as provided in this subsection, as follows:

2 (A) Certificate or apostille relating to the authority of
 3 certain public officers, including the membership of boards and
 4 commissions.. . . . \$10.00

5 (B) Plus, for each additional certificate pertaining to the
 6 same transaction 5.00

7 (C) Any other certificate not specified in this
 8 subdivision.. . . . 10.00

9 (D) For acceptance, indexing and recordation of service of
 10 process any corporation, limited partnership, limited liability
 11 partnership, limited liability company, voluntary association,
 12 business trust, insurance company, person or other entity as
 13 permitted by law. 15.00

14 (E) For shipping and handling expenses for execution of
 15 service of process by certified mail upon any defendant within the
 16 United States, which fee is to be deposited to the special revenue
 17 account established in this section for the operation of the office
 18 of the Secretary of State.. . . . 5.00

19 (F) For shipping and handling expenses for execution of
 20 service of process upon any defendant outside the United States by
 21 registered mail, which fee is to be deposited to the special
 22 revenue account established in this section for the operation of
 23 the office of the Secretary of State... 15.00

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

4 (A) For any search of archival records maintained at sites
5 other than the office of the Secretary of State
6 no less than. \$10.00

7 (B) For searches of archival records maintained at sites other
8 than the office of the Secretary of State which require more than
9 one hour, for each hour or fraction of an hour consumed in making
10 such search. 10.00

11 (C) For any search of records maintained on site for the
12 purpose of obtaining copies of documents or printouts of data
13 5.00

14 (D) For any search of records maintained in electronic format
15 which requires special programming to be performed by the state
16 information services agency or other vendor any actual cost, but
17 not less than. 25.00

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

21 (F) For recording any paper for which no specific fee is
22 prescribed. 5.00

23 (8) For producing and providing photocopies or printouts of

1 electronic data of specific records upon request, as follows:

2 (A) For a copy of any paper or printout of electronic data, if
3 one sheet... \$1.00

4 (B) For each sheet after the first50

5 (C) For sending the copies or lists by fax
6 transmission. 5.00

7 (D) For producing and providing photocopies of lists, reports,
8 guidelines and other documents produced in multiple copies for
9 general public use, a publication price to be established by the
10 Secretary of State at a rate approximating \$2.00 plus .10 per page
11 and rounded to the nearest dollar.

12 (E) For electronic copies of records obtained in data format
13 on disk, the cost of the record in the least expensive available
14 printed format, plus, for each required disk, which shall be
15 provided by the Secretary of State. 5.00

16 (b) The Secretary of State may propose legislative rules for
17 promulgation for charges for on-line electronic access to database
18 information or other information maintained by the Secretary of
19 State.

20 (c) For any other work or service not enumerated in this
21 subsection, the fee prescribed elsewhere in this code or a rule
22 promulgated under the authority of this code.

23 (d) The records maintained by the Secretary of State are
24 prepared and indexed at the expense of the state and those records

1 shall not be obtained for commercial resale without the written
2 agreement of the state to a contract including reimbursement to the
3 state for each instance of resale.

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

8 (f) There is hereby continued in the State Treasury a special
9 revenue account to be known as the "service fees and collections"
10 account. Expenditures from the account shall be used for the
11 operation of the office of the Secretary of State and are not
12 authorized from collections, but are to be made only in accordance
13 with appropriation by the Legislature and in accordance with ~~the~~
14 ~~provisions of~~ article three, chapter twelve of this code and upon
15 the fulfillment of ~~the provisions set forth in~~ article two, chapter
16 five-a of this code. Notwithstanding any other provision of this
17 code to the contrary, except as provided in subsection (h) of this
18 section and section two-a of this article, one half of all the fees
19 and service charges established in the following sections and for
20 the following purposes shall be deposited by the Secretary of State
21 or other collecting agency to that special revenue account and used
22 for the operation of the office of the Secretary of State:

23 (1) The annual attorney-in-fact fee for corporations and
24 limited partnerships established in section five, article twelve-c,

1 chapter eleven of this code;

2 (2) The fees received for the sale of the State Register, code
3 of state rules and other copies established by rule and authorized
4 by section seven, article two, chapter twenty-nine-a of this code;

5 (3) The registration fees, late fees and legal settlements
6 charged for registration and enforcement of the charitable
7 organizations and professional solicitations established in
8 sections five, nine and fifteen-b, article nineteen, chapter
9 twenty-nine of this code;

10 (4) The annual attorney-in-fact fee for limited liability
11 companies as designated in section one hundred eight, article one,
12 chapter thirty-one-b of this code and established in section two
13 hundred eleven, article two of said chapter: *Provided*, That after
14 June 30, 2008, the annual report fees designated in section one
15 hundred eight, article one, chapter thirty-one-b of this code shall
16 upon collection be deposited in the general administrative fees
17 account described in subsection (h) of this section;

18 (5) The filing fees and search and copying fees for uniform
19 commercial code transactions established by section five hundred
20 twenty-five, article nine, chapter forty-six of this code;

21 (6) The annual attorney-in-fact fee for licensed insurers
22 established in section twelve, article four, chapter thirty-three
23 of this code;

24 (7) The fees for the application and record maintenance of all

1 notaries public established by section one hundred seven, article
2 one, chapter twenty-nine-c of this code;

3 (8) The fees for the application and record maintenance of
4 commissioners for West Virginia as established by section twelve,
5 article four, chapter twenty-nine of this code;

6 (9) The fees for registering credit service organizations as
7 established by section five, article six-c, chapter forty-six-a of
8 this code;

9 (10) The fees for registering and renewing a West Virginia
10 limited liability partnership as established by section one,
11 article ten, chapter forty-seven-b of this code;

12 (11) The filing fees for the registration and renewal of
13 trademarks and service marks established in section seventeen,
14 article two, chapter forty-seven of this code;

15 (12) All fees for services, the sale of photocopies and data
16 maintained at the expense of the Secretary of State as provided in
17 this section; and

18 (13) All registration, license and other fees collected by the
19 Secretary of State not specified in this section.

20 (g) Any balance in the service fees and collections account
21 established by this section which exceeds \$500,000 as of June 30,
22 2003, and each year thereafter, shall be expired to the state fund,
23 General Revenue Fund.

24 (h) (1) Effective July 1, 2008, there is hereby created in the

1 State Treasury a special revenue account to be known as the general
2 administrative fees account. Expenditures from the account shall
3 be used for the operation of the office of the Secretary of State
4 and are not authorized from collections, but are to be made only in
5 accordance with appropriation by the Legislature and in accordance
6 with ~~the provisions of~~ article three, chapter twelve of this code
7 and upon the fulfillment of ~~the provisions set forth in~~ article
8 two, chapter eleven-b of this code: *Provided*, That for the fiscal
9 year ending June 30, 2009, expenditures are authorized from
10 collections rather than pursuant to an appropriation by the
11 Legislature. Any balance in the account at the end of each fiscal
12 year shall not revert to the General Revenue Fund but shall remain
13 in the fund and be expended as provided by this subsection.

14 (2) After June 30, 2008, all the fees and service charges
15 established in section two-a of this article for the following
16 purposes shall be collected and deposited by the Secretary of State
17 or other collecting agency in the general administrative fees
18 account and used for the operation of the office of the Secretary
19 of State:

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

23 (B) The fees for the issuance of a certificate relating to the
24 initial registration of a corporation, limited partnership,

1 domestic limited liability company or foreign limited liability
2 company described in subdivision (2), subsection (a) of this
3 section; and

4 (C) The fees for the purchase of date and updates related to
5 the state's Business Organizations Database described in section
6 two-a of this article.

7 (i) There is continued in the office of the Secretary of State
8 a noninterest bearing, escrow account to be known as the "prepaid
9 fees and services account". This account shall be for the purpose
10 of allowing customers of the Secretary of State to prepay for
11 services, with payment to be held in escrow until services are
12 rendered. Payments deposited in the account shall remain in the
13 account until services are rendered by the Secretary of State and
14 at that time the fees will be reallocated to the appropriate
15 general or special revenue accounts. There shall be no fee charged
16 by the Secretary of State to the customer for the use of this
17 account and the customer may request the return of any moneys
18 maintained in the account at any time without penalty. The assets
19 of the prepaid fees and services account do not constitute public
20 funds of the state and are available solely for carrying out the
21 purposes of this section.

NOTE: The purpose of this bill is to provide procedures for foreign profit and foreign nonprofit corporations to be reinstated following administrative revocation. The bill provides for appeals. The bill also establishes a reinstatement fee for

domestic and foreign limited liability companies and domestic and foreign corporations after administrative dissolutions.

§31D-15-1532 and §31E-14-1432 have been completely rewritten; therefore, they have been completely underscored.

§31D-14-1533 is new; therefore, it has been completely underscored.

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.