

Senate Bill No. 644

(By Senator Prezioso)

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

**FISCAL
NOTE**

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

20 Be it enacted by the Legislature of West Virginia:

21 That §31D-15-1532 of the Code of West Virginia, 1931, as
22 amended, be amended and reenacted; that said code be amended by
23 adding thereto a new section, designated §31D-15-1533; that
24 §31E-14-1432 of said code be amended and reenacted; and that
25 §59-1-2 of said code be amended and reenacted, all to read as
26 follows:

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

2 **ARTICLE 15. FOREIGN CORPORATIONS.**

3 **§31D-15-1532. Reinstatement following administrative revocation.**

4 (a) A corporation administratively revoked under section one
5 thousand five hundred thirty-one of this article may apply to the
6 Secretary of State for reinstatement within two years after the
7 effective date of revocation. The application must:

8 (1) Recite the name of the corporation and the effective date
9 of its administrative revocation;

10 (2) State that the ground or grounds for revocation have been
11 eliminated;

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

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

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

25 (c) When the reinstatement is effective, it relates back to
26 and takes effect as of the effective date of the administrative

1 revocation and the corporation resumes carrying on its business as
2 if the administrative revocation had never occurred.

3 **§31D-15-1533. Appeal from denial of reinstatement.**

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

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

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

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

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

21 **ARTICLE 14. FOREIGN CORPORATIONS.**

22 **§31E-14-1432. Reinstatement following administrative revocation.**

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

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

3 (2) State that the ground or grounds for revocation have been
4 eliminated;

5 (3) State that the corporation's name satisfies the
6 requirements of section one thousand four hundred six of this
7 article; and

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

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

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

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

23 **NEWSPAPERS; LEGAL ADVERTISEMENTS.**

24 **ARTICLE 1. FEES AND ALLOWANCES.**

25 **§59-1-2. Fees to be charged by Secretary of State.**

26 (a) Except as may be otherwise provided in this code, the

1 Secretary of State shall charge for services rendered in his or her
2 office the following fees to be paid by the person to whom the
3 service is rendered at the time it is done:

4 (1) For filing, recording, indexing, preserving a record of
5 and issuing a certificate relating to the formation, amendment,
6 change of name, registration of trade name, merger, consolidation,
7 conversion, renewal, dissolution, termination, cancellation,
8 withdrawal revocation and reinstatement of business entities
9 organized within the state, as follows:

10 (A) Articles of incorporation of for-profit
11 corporation.. . . . \$50.00

12 (B) Articles of incorporation of nonprofit
13 corporation.. . . . 25.00

14 (C) Articles of organization of limited liability
15 company.. . . . 100.00

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

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

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

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

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

23 (I) Amendment or correction, including change of name, of
24 articles of organization of business trust, limited liability
25 partnership, limited liability company or professional limited
26 liability company or of certificate of limited partnership or

1 agreement of voluntary association. 25.00

2 (J) Amendment and restatement of articles of incorporation,
3 certificate of limited partnership, agreement of voluntary
4 association or articles of organization of limited liability
5 partnership, limited liability company or professional limited
6 liability company or business trust.. . . . 25.00

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

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

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

16 (N) Statement of conversion, when permitted, from one business
17 entity into another business entity, in addition to the cost of
18 filing the appropriate documents to organize the surviving entity
19 25.00

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

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

25 (Q) Articles of termination of a limited liability company,
26 cancellation of a limited partnership or statement of withdrawal of

1 limited liability partnership.. 25.00

2 (R) Reinstatement of a domestic or foreign limited liability

3 company, ~~or~~ a professional limited liability company or a domestic

4 or foreign corporation after administrative dissolution.. . 25.00

5 (2) For filing, recording, indexing, preserving a record of

6 and issuing a certificate relating to the registration, amendment,

7 change of name, merger, consolidation, conversion, renewal,

8 withdrawal or termination within this state of business entities

9 organized in other states or countries, as follows:

10 (A) Certificate of authority of for-profit corporation

11 \$100.00

12 (B) Certificate of authority of nonprofit corporation

13 50.00

14 (C) Certificate of authority of foreign limited liability

15 companies.. 150.00

16 (D) Certificate of exemption from certificate of authority

17 25.00

18 (E) Registration of a general partnership. 50.00

19 (F) Registration of a limited partnership. 150.00

20 (G) Registration of a limited liability partnership for

21 two-year term.. 500.00

22 (H) Registration of a voluntary association. 50.00

23 (I) Registration of a trust or business trust. 50.00

24 (J) Amendment or correction of certificate of authority of a

25 foreign corporation, including change of name or increase of

26 capital stock, in addition to any applicable license tax. . 25.00

1 (K) Amendment or correction of certificate of limited
2 partnership, limited liability partnership, limited liability
3 company or professional limited liability company, voluntary
4 association or business trust.. 25.00

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

8 (M) Amendment and restatement of certificate of authority or
9 of registration of a corporation, limited partnership, limited
10 liability partnership, limited liability company or professional
11 limited liability company, voluntary association or business trust
12 25.00

13 (N) Articles of merger of two corporations, limited
14 partnerships, limited liability partnerships, limited liability
15 companies or professional limited liability companies, voluntary
16 associations or business trusts.. 25.00

17 (O) Plus for each additional party to the merger in excess
18 of two. 5.00

19 (P) Statement of conversion, when permitted, from one business
20 entity into another business entity, in addition to the cost of
21 filing the appropriate articles or certificate to organize the
22 surviving entity. 25.00

23 (Q) Certificate of withdrawal or cancellation of a
24 corporation, limited partnership, limited liability partnership,
25 limited liability company, voluntary association or business trust
26 25.00

1 Notwithstanding any other provision of this section to the
2 contrary, after June 30, 2008, the fees described in this
3 subdivision that are collected for the issuance of a certificate
4 relating to the initial registration of a corporation, limited
5 partnership, domestic limited liability company or foreign limited
6 liability company shall be deposited in the general administrative
7 fees account established by this section.

8 (3) For receiving, filing and recording a change of the
9 principal or designated office, change of the agent of process
10 and/or change of officers, directors, partners, members or
11 managers, as the case may be, of a corporation, limited
12 partnership, limited liability partnership, limited liability
13 company or other business entity as provided by law.. . . \$15.00

14 (4) For receiving, filing and preserving a reservation of a
15 name for each one hundred twenty days or for any other period in
16 excess of seven days prescribed by law for a corporation, limited
17 partnership, limited liability partnership or limited liability
18 company.. . . . \$15.00

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

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

23 (B) Certificate of existence of a domestic limited liability
24 company, and certificate of authorization foreign limited liability
25 company.. . . . 10.00

26 (C) Certificate of existence of any business entity, trademark

1 or service mark registered with the Secretary of State. . . 10.00

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

4 (E) Plus, for each additional amendment, restatement or other
5 additional document.. . . . 5.00

6 (F) Certificate of registration of the name of a foreign
7 corporation, limited liability company, limited partnership or
8 limited liability partnership.. . . . 25.00

9 (G) And for the annual renewal of the name registration
10 10.00

11 (H) Any other certificate not specified in this subdivision
12 10.00

13 (6) For issuing a certificate other than those relating to
14 business entities, as provided in this subsection, as follows:

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

18 (B) Plus, for each additional certificate pertaining to the
19 same transaction 5.00

20 (C) Any other certificate not specified in this
21 subdivision.. . . . 10.00

22 (D) For acceptance, indexing and recordation of service of
23 process any corporation, limited partnership, limited liability
24 partnership, limited liability company, voluntary association,
25 business trust, insurance company, person or other entity as
26 permitted by law. 15.00

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

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

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

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

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

21 (C) For any search of records maintained on site for the
22 purpose of obtaining copies of documents or printouts of data
23 5.00

24 (D) For any search of records maintained in electronic format
25 which requires special programming to be performed by the state
26 information services agency or other vendor any actual cost, but

1 not less than.. 25.00

2 (E) The cost of the search is in addition to the cost of any
3 copies or printouts prepared or any certificate issued pursuant to
4 or based on the search.

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

7 (8) For producing and providing photocopies or printouts of
8 electronic data of specific records upon request, as follows:

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

11 (B) For each sheet after the first50

12 (C) For sending the copies or lists by fax
13 transmission. 5.00

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

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

23 (b) The Secretary of State may propose legislative rules for
24 promulgation for charges for on-line electronic access to database
25 information or other information maintained by the Secretary of
26 State.

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

4 (d) The records maintained by the Secretary of State are
5 prepared and indexed at the expense of the state and those records
6 shall not be obtained for commercial resale without the written
7 agreement of the state to a contract including reimbursement to the
8 state for each instance of resale.

9 (e) The Secretary of State may provide printed or electronic
10 information free of charge as he or she considers necessary and
11 efficient for the purpose of informing the general public or the
12 news media.

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

1 for the operation of the office of the Secretary of State:

2 (1) The annual attorney-in-fact fee for corporations and
3 limited partnerships established in section five, article twelve-c,
4 chapter eleven of this code;

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

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

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

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

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

1 (7) The fees for the application and record maintenance of all
2 notaries public established by section one hundred seven, article
3 one, chapter twenty-nine-c of this code;

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

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

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

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

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

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

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

25 (h) (1) Effective July 1, 2008, there is hereby created in the
26 State Treasury a special revenue account to be known as the general

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

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

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

22 (B) The fees for the issuance of a certificate relating to the
23 initial registration of a corporation, limited partnership,
24 domestic limited liability company or foreign limited liability
25 company described in subdivision (2), subsection (a) of this
26 section; and

1 (C) The fees for the purchase of data and updates related to
2 the state's Business Organizations Database described in section
3 two-a of this article.

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

§31D-14-1533 is new; therefore, strike-throughs and underscoring have been omitted

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.