

ENROLLED

Senate Bill No. 619

(BY SENATORS PREZIOSO AND MINARD)

[Passed March 10, 2012; to take effect July 1, 2012.]

AN ACT to amend and reenact §59-1-2a of the Code of West Virginia, 1931, as amended, relating to annual business fees paid to the Secretary of State; clarifying that limited liability companies, foreign limited liability companies and foreign corporations are required to file annual reports; eliminating criminal penalties; changing a \$100 penalty to a \$50 late fee for delinquent annual reports; providing a \$25 late fee for delinquent annual reports for nonprofit corporations; allowing the Secretary of State to deposit a portion of late fees collected in its general administrative fees account; authorizing the Secretary of State to charge a fee for online purchases of data or conducting transactions online; and authorizing rulemaking.

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.

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

2 (1) “Annual report fee” means the fee described in
3 subsection (c) of this section that is to be paid to the Secre-

4 tary of State each year by corporations, limited partnerships,
5 domestic limited liability companies and foreign limited
6 liability companies. After June 30, 2008, any reference in this
7 code to a fee paid to the Secretary of State for services as a
8 statutory attorney in fact shall mean the annual report fee
9 described in this section.

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

23 (3) “Corporation” means a “domestic corporation”, a
24 “foreign corporation” or a “nonprofit corporation”.

25 (4) “Deliver or delivery” means any method of delivery
26 used in conventional commercial practice, including, but not
27 limited to, delivery by hand, mail, commercial delivery and
28 electronic transmission.

29 (5) “Domestic corporation” means a corporation for
30 profit which is not a foreign corporation incorporated under
31 or subject to chapter thirty-one-d of this code.

32 (6) “Domestic limited liability company” means a limited
33 liability company which is not a foreign limited liability
34 company under or subject to chapter thirty-one-b of this
35 code.

36 (7) “Foreign corporation” means a for-profit corporation
37 incorporated under a law other than the laws of this state.

38 (8) “Foreign limited liability company” means a limited
39 liability company organized under a law other than the laws
40 of this state.

41 (9) “Limited partnership” means a partnership as defined
42 by section one, article nine, chapter forty-seven of this code.

43 (10) “Nonprofit corporation” means a nonprofit corpora-
44 tion as defined by section one hundred fifty, article one,
45 chapter thirty-one-e of this code.

46 (11) “Registration fee” means the fee for the issuance of
47 a certificate relating to the initial registration of a corpora-
48 tion, limited partnership, domestic limited liability company
49 or foreign limited liability company described in subdivision
50 (2), subsection (a), section two of this article. The term
51 “initial registration” also means the date upon which the
52 registration fee is paid.

53 (b) *Required payment of annual report fee and filing of*
54 *annual report.* — After June 30, 2008, no corporation, limited
55 partnership, domestic limited liability company or foreign
56 limited liability company may engage in any business
57 activity in this state without paying the annual report fee
58 and filing the annual report as required by this section.

59 (c) *Annual report fee.* — After June 30, 2008, each
60 corporation, limited partnership, domestic limited liability
61 company and foreign limited liability company engaged in or
62 authorized to do business in this state shall pay an annual
63 report fee of \$25 for the services of the Secretary of State as
64 attorney-in-fact for the corporation, limited partnership,
65 domestic limited liability company or foreign limited
66 liability company, and for such other administrative services
67 as may be imposed by law upon the Secretary of State. The
68 fee is due and payable each year after the initial registration
69 of the corporation, limited partnership, domestic limited
70 liability company or foreign limited liability company with
71 the annual report described in subsection (d) of this section
72 on or before the dates specified in subsection (e) of this
73 section. The fee is due and payable each year with the annual

74 report from corporations, limited partnerships, domestic
75 limited liability companies and foreign limited liability
76 companies that paid the registration fee prior to July 1, 2008,
77 on or before the dates specified in subsection (e) of this
78 section. The annual report fees received by the Secretary of
79 State pursuant to this subsection shall be deposited by the
80 Secretary of State in the general administrative fees account
81 established by section two of this article.

82 (d) *Annual report.* — (1) After June 30, 2008, each
83 corporation, limited partnership, domestic limited liability
84 company and foreign limited liability company engaged in or
85 authorized to do business in this state shall file an annual
86 report. The report is due each year after the initial registra-
87 tion of the corporation, limited partnership, domestic limited
88 liability company or foreign limited liability company with
89 the annual report fee described in subsection (c) of this
90 section on or before the dates specified in subsection (e) of
91 this section. The report is due each year from corporations,
92 limited partnerships, domestic limited liability companies
93 and foreign limited liability companies that paid the regis-
94 tration fee prior to July 1, 2008, on or before the dates
95 specified in subsection (e) of this section.

96 (2) (A) The annual report shall be filed with the Secretary
97 of State on forms provided by the Secretary of State for that
98 purpose. The annual report shall, in the case of corporations,
99 contain: (i) The address of the corporation's principal office;
100 (ii) the names and mailing addresses of its officers and
101 directors; (iii) the name and mailing address of the person on
102 whom notice of process may be served; (iv) the name and
103 address of the corporation's parent corporation and of each
104 subsidiary of the corporation licensed to do business in this
105 state; (v) in the case of limited partnerships domestic limited
106 liability companies and foreign limited liability companies,
107 similar information with respect to their principal or
108 controlling interests as determined by the Secretary of State
109 or otherwise required by law to be reported to the Secretary
110 of State; (vi) the county or county code in which the princi-
111 pal office address or mailing address of the company is

112 located; (vii) business class code; and (viii) any other infor-
113 mation the Secretary of State considers appropriate.

114 (B) Notwithstanding any other provision of law to the
115 contrary, the Secretary of State shall, upon request of any
116 person, disclose, with respect to corporations: (i) The address
117 of the corporation's principal office; (ii) the names and
118 addresses of its officers and directors; (iii) the name and
119 mailing address of the person on whom notice of process may
120 be served; (iv) the name and address of each subsidiary of the
121 corporation and the corporation's parent corporation; (v) the
122 county or county code in which the principal office address
123 or mailing address of the company is located; and (vi) the
124 business class code. The Secretary of State shall provide
125 similar information with respect to information in its
126 possession relating to limited partnerships domestic limited
127 liability companies and foreign limited liability companies,
128 similar information with respect to their principal or
129 controlling interests.

130 (e) *Annual reports and fees due July 1* — Each domestic
131 and foreign corporation, limited partnership, limited liability
132 company and foreign limited liability company shall file with
133 the Secretary of State the annual report and pay the annual
134 report fee by July 1 of each year.

135 (f) *Deposit of fees.* — The annual report fees received by
136 the Secretary of State pursuant to this section shall be
137 deposited by the Secretary of State in the general adminis-
138 trative fees account established by section two, article one,
139 chapter fifty-nine of this code.

140 (g) *Duty to pay.* — It shall be the duty of each corpora-
141 tion, limited partnership, limited liability company and
142 foreign limited liability company required to pay the annual
143 report fees imposed under this article, to remit them with a
144 properly completed annual report to the Secretary of State,
145 and if it fails to do so it shall be subject to the late fees
146 prescribed in subsection (h) of this article.

147 (h) *Late fees.* — (1) The following late fees shall be in
148 addition to any other penalties and remedies available
149 elsewhere in this code:

150 (A) *Administrative late fee.* — The Secretary of State
151 shall assess upon each corporation, limited partnership,
152 limited liability company and foreign limited liability
153 company delinquent in the payment of an annual report fee
154 or the filing of an annual report an administrative late fee in
155 the amount of \$50.

156 (B) *Administrative late fees for nonprofit corporations.* —
157 The Secretary of State shall assess each nonprofit corpora-
158 tion delinquent in the payment of an annual report fee or the
159 filing of an annual report an administrative late fee in the
160 amount of \$25.

161 (2) The Secretary of State shall deposit the first \$25,000
162 of fees collected under this subsection into the general
163 administrative fees account established in subsection (h),
164 section two of this article, and shall deposit any additional
165 fees collected under this section into the General Revenue
166 Fund of the State.

167 (i) *Reports to Tax Commissioner; suspension, cancella-*
168 *tion or withholding of business registration certificate.* — (1)
169 The Secretary of State shall, within twenty days after the
170 close of each month, make a report to the Tax Commissioner
171 for the preceding month, in which he or she shall set out the
172 name of every business entity to which he or she issued a
173 certificate to conduct business in the State of West Virginia
174 during that month. The report shall set out the names and
175 addresses all corporations, limited partnerships, limited
176 liability companies and foreign limited liability companies
177 to which he or she issued certificates of change of name or of
178 change of location of principal office, dissolution, with-
179 drawal or merger. If the Secretary of State fails to make the
180 report, it shall be the duty of the Tax Commissioner to report
181 such failure to the Governor. A writ of mandamus shall lie
182 for correction of such failure.

183 (2) Notwithstanding any other provisions of this code to
184 the contrary, upon receipt of notice from the Secretary of
185 State that a corporation, limited partnership, limited
186 liability company and foreign limited liability company is
187 more than thirty days delinquent in the payment of annual
188 report fees or in the filing of an annual report required by
189 this section, the Tax Commissioner may suspend, cancel or
190 withhold a business registration certificate issued to or
191 applied for by the delinquent corporation, limited partner-
192 ship, limited liability company or foreign limited liability
193 company until the same is paid and filed in the manner
194 provided for the suspension, cancellation or withholding of
195 business registration certificates for other reasons under
196 article twelve, chapter eleven of this code.

197 (j) *Purchase of data.* — The Secretary of State will
198 provide electronically, for purchase, any data maintained in
199 the Secretary of State’s Business Organizations Database.
200 For the electronic purchase of the entire Business Organiza-
201 tions Database, the cost is \$12,000. For the purchase of the
202 monthly updates of the Business Organizations Database, the
203 cost is \$1,000 per month. The fees received by the Secretary
204 of State pursuant to this subsection shall be deposited by the
205 Secretary of State in the general administrative fees account
206 established by section two, article one, chapter fifty-nine of
207 this code.

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

212 (l) *Rules.* — The Secretary of State may propose legisla-
213 tive rules for promulgation pursuant to article three, chapter
214 twenty-nine-a of this code to implement this article, and
215 may, pending promulgation of those rules, promulgate
216 emergency rules pursuant to those provisions for those
217 purposes.