

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 2553**

5
6 (By Delegates Morgan, Stephens, Diserio, Jones,
7 Paxton, M. Smith, Staggers, Hartman and Lynch)

8 [Passed April 10, 2013; in effect ninety days from passage.]

9

10 AN ACT to amend and reenact §31B-8-809 of the Code of West
11 Virginia, 1931, as amended; to amend and reenact §31B-10-1006
12 of said code; to amend and reenact §31D-14-1420 of said code;
13 to amend and reenact §31D-15-1530 of said code; to amend and
14 reenact §31E-13-1320 of said code; to amend and reenact
15 §31E-14-1430 of said code; and to amend and reenact §59-1-2a
16 of said code, all relating to the authority to conduct
17 business in the state; authorizing the Secretary of State to
18 administratively dissolve or revoke the certificate of
19 authority of certain business entities; authorizing
20 dissolution or revocation if certain business entities fail to
21 pay fees imposed by law; requiring notice to a business entity
22 by certified mail before dissolution or revocation due to
23 failure to pay fees; permitting a bad check fee if certain
24 payment by check or money order is rejected for certain
25 reasons; authorizing dissolution or revocation if one or more
26 professional licenses have been revoked and the license is or

1 licenses are necessary for the continued operation of the
2 business entity; and authorizing dissolution or revocation if
3 the business entity is in default with the Bureau of
4 Employment Programs.

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

6 That §31B-8-809 of the Code of West Virginia, 1931, as
7 amended, be amended and reenacted; that §31B-10-1006 of said code
8 be amended and reenacted; that §31D-14-1420 of said code be amended
9 and reenacted; that §31D-15-1530 of said code be amended and
10 reenacted; that §31E-13-1320 of said code be amended and reenacted;
11 that §31E-14-1430 of said code be amended and reenacted; and that
12 §59-1-2a of said code be amended and reenacted, all to read as
13 follows:

14 **CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.**

15 **ARTICLE 8. WINDING UP COMPANY'S BUSINESS.**

16 **§31B-8-809. Grounds for administrative dissolution.**

17 The Secretary of State may commence a proceeding to
18 administratively dissolve a limited liability company if: (1) The
19 company fails to pay any fees, taxes or penalties imposed by this
20 chapter or other law within sixty days after they are due;

21 (2) The company fails to deliver its annual report to the
22 Secretary of State within sixty days after it is due;

23 (3) The professional license of one or more of the license
24 holders is revoked by a professional licensing board and the
25 license is or all the licenses are required for the continued

1 operation of the company; or

2 (4) The company is in default with the Bureau of Employment
3 Programs as provided in section six, article two, chapter
4 twenty-one-a of this code.

5 **ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.**

6 **§31B-10-1006. Revocation and reinstatement of certificate of**
7 **authority.**

8 (a) A certificate of authority of a foreign limited liability
9 company to transact business in this state may be revoked by the
10 Secretary of State in the manner provided in subsection (b) of this
11 section if:

12 (1) The company fails to:

13 (i) Pay any fees, taxes and penalties owed to this state;

14 (ii) Deliver its annual report required under section 2-211 to
15 the Secretary of State within sixty days after it is due; or

16 (iii) File a statement of a change in the name or business
17 address of the agent as required by this article;

18 (2) A misrepresentation has been made of any material matter
19 in any application, report, affidavit or other record submitted by
20 the company pursuant to this article;

21 (3) The professional license of one or more of the license
22 holders is revoked by a professional licensing board and the
23 license is or all the licenses are required for the continued
24 operation of the company; or

25 (4) The company is in default with the Bureau of Employment

1 Programs as provided in section six, article two, chapter
2 twenty-one-a of this code.

3 (b) The Secretary of State may not revoke a certificate of
4 authority of a foreign limited liability company unless the
5 Secretary of State sends the company notice of the revocation, at
6 least sixty days before its effective date, by a record addressed
7 to its principal office. The notice must specify the cause for the
8 revocation of the certificate of authority. The authority of the
9 company to transact business in this state ceases on the effective
10 date of the revocation unless the foreign limited liability company
11 cures the failure before that date.

12 (c) A foreign limited liability company administratively
13 revoked may apply to the Secretary of State for reinstatement
14 within two years after the effective date of revocation. The
15 application must:

16 (1) Recite the name of the company and the effective date of
17 its administrative revocation; (2) state that the ground for
18 revocation either did not exist or has been eliminated; (3) state
19 that the company's name satisfies the requirements of section 10-
20 1005; and (4) contain a certificate from the Tax Commissioner
21 reciting that all taxes owed by the company have been paid.

22 (d) If the Secretary of State determines that the application
23 contains the information required by subsection (a) of this section
24 and that the information is correct, the Secretary of State shall
25 cancel the certificate of revocation and prepare a certificate of
26 reinstatement that recites this determination and the effective

1 date of reinstatement, file the original of the certificate and
2 serve the company with a copy of the certificate.

3 (e) When reinstatement is effective, it relates back to and
4 takes effect as of the effective date of the administrative
5 revocation and the company may resume its business as if the
6 administrative revocation had never occurred.

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

8 **ARTICLE 14. DISSOLUTION.**

9 PART II. ADMINISTRATIVE DISSOLUTION.

10 **§31D-14-1420. Grounds for administrative dissolution.**

11 The Secretary of State may commence a proceeding under section
12 one thousand four hundred twenty-one of this article to
13 administratively dissolve a corporation if:

14 (1) The corporation does not pay within sixty days after they
15 are due any fees, franchise taxes or penalties imposed by this
16 chapter or other law;

17 (2) The corporation does not notify the Secretary of State
18 within sixty days that its registered agent or registered office
19 has been changed, that its registered agent has resigned or that
20 its registered office has been discontinued;

21 (3) The corporation's period of duration stated in its
22 articles of incorporation expires;

23 (4) The professional license of one or more of the license
24 holders is revoked by a professional licensing board and the
25 license is or all the licenses are required for the continued

1 operation of the corporation; or

2 (5) The corporation is in default with the Bureau of
3 Employment Programs as provided in section six, article two,
4 chapter twenty-one-a of this code.

5 **ARTICLE 15. FOREIGN CORPORATIONS.**

6 PART III. REVOCATION OF CERTIFICATE OF AUTHORITY.

7 **§31D-15-1530. Grounds for revocation.**

8 The Secretary of State may commence a proceeding under section
9 one thousand five hundred thirty-one of this article to revoke the
10 certificate of authority of a foreign corporation authorized to
11 transact business in this state if:

12 (1) The foreign corporation does not pay within sixty days
13 after they are due any fees, franchise taxes or penalties imposed
14 by this chapter or other law;

15 (2) The foreign corporation does not inform the Secretary of
16 State under section one thousand five hundred eight or one thousand
17 five hundred nine of this article that its registered agent or
18 registered office has changed, that its registered agent has
19 resigned or that its registered office has been discontinued within
20 sixty days of the change, resignation or discontinuance;

21 (3) An incorporator, director, officer or agent of the foreign
22 corporation signed a document he or she knew was false in any
23 material respect with intent that the document be delivered to the
24 Secretary of State for filing;

25 (4) The Secretary of State receives a duly authenticated
26 certificate from the Secretary of State or other official having

1 custody of corporate records in the state or country under whose
2 law the foreign corporation is incorporated stating that it has
3 been dissolved or disappeared as the result of a merger;

4 (5) The professional license of one or more of the license
5 holders is revoked by a professional licensing board and the
6 license is or all the licenses are required for the continued
7 operation of the foreign corporation; or

8 (6) The foreign corporation is in default with the Bureau of
9 Employment Programs as provided in section six, article two,
10 chapter twenty-one-a of this code.

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

12 **ARTICLE 13. DISSOLUTION.**

13 PART II. ADMINISTRATIVE DISSOLUTION.

14 **§31E-13-1320. Grounds for administrative dissolution.**

15 The Secretary of State may commence a proceeding under section
16 one thousand three hundred twenty-one of this article to
17 administratively dissolve a corporation if:

18 (1) The corporation does not pay within sixty days after they
19 are due any fees, franchise taxes or penalties imposed by this
20 chapter or other law;

21 (2) The corporation does not notify the Secretary of State
22 within sixty days that its registered agent or registered office
23 has been changed, that its registered agent has resigned or that
24 its registered office has been discontinued;

25 (3) The corporation's period of duration stated in its

1 articles of incorporation expires;

2 (4) The professional license of one or more of the license
3 holders is revoked by a professional licensing board and the
4 license is or all the licenses are required for the continued
5 operation of the nonprofit entity; or

6 (5) The corporation is in default with the Bureau of
7 Employment Programs as provided in section six, article two,
8 chapter twenty-one-a of this code.

9 **ARTICLE 14. FOREIGN CORPORATIONS.**

10 PART III. REVOCATION OF CERTIFICATE OF AUTHORITY.

11 **§31E-14-1430. Grounds for revocation.**

12 The Secretary of State may commence a proceeding under section
13 one thousand four hundred thirty-one of this article to revoke the
14 certificate of authority of a foreign corporation authorized to
15 conduct activities in this state if:

16 (1) The foreign corporation does not pay within sixty days
17 after they are due any fees, franchise taxes or penalties imposed
18 by this chapter or other law;

19 (2) The foreign corporation does not inform the Secretary of
20 State under sections one thousand four hundred eight or one
21 thousand four hundred nine of this article that its registered
22 agent or registered office has changed, that its registered agent
23 has resigned, or that its registered office has been discontinued
24 within sixty days of the change, resignation or discontinuance;

25 (3) An incorporator, director, officer or agent of the foreign
26 corporation signed a document he or she knew was false in any

1 material respect with intent that the document be delivered to the
2 Secretary of State for filing;

3 (4) The Secretary of State receives a duly authenticated
4 certificate from the Secretary of State or other official having
5 custody of corporate records in the state or country under whose
6 law the foreign corporation is incorporated stating that it has
7 been dissolved or disappeared as the result of a merger;

8 (5) The professional license of one or more of the license
9 holders is revoked by a professional licensing board and the
10 license is or all the licenses are required for the continued
11 operation of the corporation; or

12 (6) The foreign corporation is in default with the Bureau of
13 Employment Programs as provided in section six, article two,
14 chapter twenty-one-a of this code.

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

16 **NEWSPAPERS; LEGAL ADVERTISEMENTS.**

17 **ARTICLE 1. FEES AND ALLOWANCES.**

18 **§59-1-2a. Annual business fees to be paid to the Secretary of**
19 **State; filing of annual reports; purchase of data.**

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

21 (1) "Annual report fee" means the fee described in subsection
22 (c) of this section that is to be paid to the Secretary of State
23 each year by corporations, limited partnerships, domestic limited
24 liability companies and foreign limited liability companies. After
25 June 30, 2008, any reference in this code to a fee paid to the

1 Secretary of State for services as a statutory attorney in fact
2 shall mean the annual report fee described in this section.

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

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

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

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

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

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

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

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

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

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

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

23 (c) *Annual report fee.* -- After June 30, 2008, each
24 corporation, limited partnership, domestic limited liability
25 company and foreign limited liability company engaged in or
26 authorized to do business in this state shall pay an annual report

1 fee of \$25 for the services of the Secretary of State as attorney-
2 in-fact for the corporation, limited partnership, domestic limited
3 liability company or foreign limited liability company, and for
4 such other administrative services as may be imposed by law upon
5 the Secretary of State. The fee is due and payable each year after
6 the initial registration of the corporation, limited partnership,
7 domestic limited liability company or foreign limited liability
8 company with the annual report described in subsection (d) of this
9 section on or before the dates specified in subsection (e) of this
10 section. The fee is due and payable each year with the annual
11 report from corporations, limited partnerships, domestic limited
12 liability companies and foreign limited liability companies that
13 paid the registration fee prior to July 1, 2008, on or before the
14 dates specified in subsection (e) of this section. The annual
15 report fees received by the Secretary of State pursuant to this
16 subsection shall be deposited by the Secretary of State in the
17 general administrative fees account established by section two of
18 this article.

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

1 dates specified in subsection (e) of this section. The report is
2 due each year from corporations, limited partnerships, domestic
3 limited liability companies and foreign limited liability companies
4 that paid the registration fee prior to July 1, 2008, on or before
5 the dates specified in subsection (e) of this section.

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

23 (B) Notwithstanding any other provision of law to the
24 contrary, the Secretary of State shall, upon request of any person,
25 disclose, with respect to corporations: (i) The address of the
26 corporation's principal office; (ii) the names and addresses of its

1 officers and directors; (iii) the name and mailing address of the
2 person on whom notice of process may be served; (iv) the name and
3 address of each subsidiary of the corporation and the corporation's
4 parent corporation; (v) the county or county code in which the
5 principal office address or mailing address of the company is
6 located; and (vi) the business class code. The Secretary of State
7 shall provide similar information with respect to information in
8 its possession relating to limited partnerships domestic limited
9 liability companies and foreign limited liability companies,
10 similar information with respect to their principal or controlling
11 interests.

12 (e) *Annual reports and fees due July 1.* -- Each domestic and
13 foreign corporation, limited partnership, limited liability company
14 and foreign limited liability company shall file with the Secretary
15 of State the annual report and pay the annual report fee by July 1
16 of each year.

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

22 (g) (1) *Duty to pay.* -- It shall be the duty of each
23 corporation, limited partnership, limited liability company and
24 foreign limited liability company required to pay the annual report
25 fees imposed under this article, to remit them with a properly
26 completed annual report to the Secretary of State, and if it fails

1 to do so it shall be subject to the late fees prescribed in
2 subsection (h) of this article and dissolution or revocation,
3 pursuant to this code: *Provided*, That before dissolution or
4 revocation for failure to pay fees may occur, the Secretary of
5 State shall notify the entity by certified mail, return receipt
6 requested, of its failure to pay, all late fees or bad check fees
7 associated with the failure to pay and the date upon which
8 dissolution or revocation will occur if all fees are not paid in
9 full. The certified mail required by this subdivision shall be
10 postmarked at least thirty days before the dissolution or
11 revocation date listed in the notice.

12 (2) *Bad check fee.* -- If any corporation, limited partnership,
13 limited liability company or foreign limited liability company
14 submits payment by check or money order for the annual report fee
15 imposed under this article and the check or money order is rejected
16 because there are insufficient funds in the account or the account
17 is closed, the Secretary of State shall assess a bad check fee to
18 the corporation, limited partnership, limited liability company or
19 foreign limited liability company that is equivalent to the service
20 charge paid by the Secretary of State due to the rejected check or
21 money order. The bad check fee assessed under this subdivision
22 shall be deposited into the account or accounts from which the
23 Secretary of State paid the service charge.

24 (h) *Late fees.* -- (1) The following late fees shall be in
25 addition to any other penalties and remedies available elsewhere in
26 this code:

1 (A) *Administrative late fee.* -- The Secretary of State shall
2 assess upon each corporation, limited partnership, limited
3 liability company and foreign limited liability company delinquent
4 in the payment of an annual report fee or the filing of an annual
5 report an administrative late fee in the amount of \$50.

6 (B) *Administrative late fees for nonprofit corporations.* --
7 The Secretary of State shall assess each nonprofit corporation
8 delinquent in the payment of an annual report fee or the filing of
9 an annual report an administrative late fee in the amount of \$25.

10 (2) The Secretary of State shall deposit the first \$25,000 of
11 fees collected under this subsection into the general
12 administrative fees account established in subsection (h), section
13 two of this article, and shall deposit any additional fees
14 collected under this section into the General Revenue Fund of the
15 state.

16 (i) *Reports to Tax Commissioner; suspension, cancellation or*
17 *withholding of business registration certificate.* --

18 (1) The Secretary of State shall, within twenty days after the
19 close of each month, make a report to the Tax Commissioner for the
20 preceding month, in which he or she shall set out the name of every
21 business entity to which he or she issued a certificate to conduct
22 business in the State of West Virginia during that month. The
23 report shall set out the names and addresses all corporations,
24 limited partnerships, limited liability companies and foreign
25 limited liability companies to which he or she issued certificates
26 of change of name or of change of location of principal office,

1 dissolution, withdrawal or merger. If the Secretary of State fails
2 to make the report, it shall be the duty of the Tax Commissioner to
3 report such failure to the Governor. A writ of mandamus shall lie
4 for correction of such failure.

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

18 (j) *Purchase of data.* -- The Secretary of State will provide
19 electronically, for purchase, any data maintained in the Secretary
20 of State's Business Organizations Database. For the electronic
21 purchase of the entire Business Organizations Database, the cost is
22 \$12,000. For the purchase of the monthly updates of the Business
23 Organizations Database, the cost is \$1,000 per month. The fees
24 received by the Secretary of State pursuant to this subsection
25 shall be deposited by the Secretary of State in the general
26 administrative fees account established by section two, article

1 one, chapter fifty-nine of this code.

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

6 (l) *Rules.* -- The Secretary of State may propose legislative
7 rules for promulgation pursuant to article three, chapter twenty-
8 nine-a of this code to implement this article, and may, pending
9 promulgation of those rules, promulgate emergency rules pursuant to
10 those provisions for those purposes.