

H. B. 2554

(By Delegates Morgan, Stephens, Staggers,
Hartman, Jones, Diserio and Lynch)

[Introduced February 20, 2013; referred to the
Committee on Government Organization then the Judiciary.]

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; to amend said code by adding thereto a new section, designated §31E-14-1533; and to amend and reenact §59-1-2 of said code, all relating to providing a procedure for the Secretary of State to reinstate certificates of authority for foreign corporations; and establishing a fee for reinstatement.

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 adding thereto a new section, designated §31D-15-1533; that §31E-14-1432 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §31E-14-1533;

1 and that §59-1-2 of said code be amended and reenacted, all to
2 read as follows:

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

4 **ARTICLE 15. FOREIGN CORPORATIONS.**

5 **§31D-15-1532. ~~Appeal from revocation.~~ Reinstatement following
6 administrative revocation.**

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

15 ~~(b) The circuit court may summarily order the Secretary of~~
16 ~~State to reinstate the certificate of authority or may take any~~
17 ~~other action the circuit court considers appropriate. (c) The~~
18 ~~circuit court's final decision may be appealed as in other civil~~
19 ~~proceedings.~~

20 (a) A corporation that has had its certificate of authority
21 administratively revoked under section one thousand five hundred
22 thirty-one of this article may apply to the Secretary of State for
23 reinstatement within two years after the effective date of

1 revocation. The application must:

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

4 (2) Demonstrate that the ground or grounds for revocation have
5 been eliminated;

6 (3) Demonstrate that the corporation's name satisfies the
7 requirements of section one thousand five hundred six, article
8 fifteen of this chapter; and

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

11 (b) If the Secretary of State determines that the application
12 contains the information required by subsection (a) of this section
13 and that the information is accurate, the Secretary of State shall
14 cancel the Certificate of Revocation and prepare a Certificate of
15 Reinstatement that recites the Secretary of State's determination
16 and the effective date of reinstatement. The Secretary of State
17 shall send notice of the reinstatement to the corporation within
18 thirty days of the determination.

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

23 **§31D-15-1533. Appeal from denial of reinstatement.**

24 (a) If the Secretary of State denies a corporation's

1 application for reinstatement following administrative revocation,
2 the Secretary of State shall notify the corporation within thirty
3 days of application by written notice that explains the reason or
4 reasons for denial.

5 (b) The corporation may appeal the denial of reinstatement to
6 the circuit court of Kanawha County within thirty days after
7 service of the notice of denial.

8 (c) The corporation may appeal by petitioning the circuit
9 court of Kanawha County to set aside the revocation and attaching
10 to the 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 (d) The circuit court's final decision may be appealed to the
14 West Virginia Supreme Court of Appeals in accordance with article
15 six, chapter twenty-nine-a of this code.

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

17 **ARTICLE 14. FOREIGN CORPORATIONS.**

18 **~~§31E-14-1432. Appeal from revocation. Reinstatement following~~**
19 **administrative revocation.**

20 ~~(a) A foreign corporation may appeal the Secretary of State's~~
21 ~~revocation of its certificate of authority to the circuit court~~
22 ~~within thirty days after service of the certificate of revocation~~
23 ~~is perfected pursuant to section one thousand four hundred ten of~~

~~1 this article. The foreign corporation appeals by petitioning the
2 circuit court to set aside the revocation and attaching to the
3 petition copies of its certificate of authority and the Secretary
4 of State's certificate of revocation.~~

~~5 (b) The circuit court may summarily order the Secretary of
6 State to reinstate the certificate of authority or may take any
7 other action the circuit court considers appropriate.~~

~~8 (c) The circuit court's final decision may be appealed as in
9 other civil proceedings.~~

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

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

17 (2) Demonstrate that the ground or grounds for revocation have
18 been eliminated;

19 (3) Demonstrate that the corporation's name satisfies the
20 requirements of section one thousand four hundred six, article
21 fifteen of this chapter; and

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

24 (b) If the Secretary of State determines that the application

1 contains the information required by subsection (a) of this section
2 and that the information is accurate, the Secretary of State shall
3 cancel the Certificate of Revocation and prepare a Certificate of
4 Reinstatement that recites the Secretary of State's determination
5 and the effective date of reinstatement. The Secretary of State
6 shall send notice of the reinstatement to the corporation within
7 thirty days of the determination.

8 (c) When a reinstatement is granted, the reinstatement relates
9 back to and takes effect as of the effective date of the
10 administrative revocation and the corporation resumes its business
11 as if the administrative revocation had never occurred.

12 **§31E-14-1533. Appeal from denial of reinstatement.**

13 (a) If the Secretary of State denies a corporation's
14 application for reinstatement following administrative revocation,
15 the Secretary of State shall notify the corporation within thirty
16 days of application by written notice that explains the reason or
17 reasons for denial.

18 (b) The corporation may appeal the denial of reinstatement to
19 the circuit court of Kanawha County within thirty days after
20 service of the notice of denial.

21 (c) The corporation may appeal by petitioning the circuit
22 court of Kanawha County to set aside the revocation and attaching
23 to the petition copies of the Secretary of State's Certificate of
24 Revocation, the corporation's application for reinstatement and the

1 Secretary of State's notice of denial.

2 (d) The circuit court's final decision may be appealed to the
3 West Virginia Supreme Court of Appeals in accordance with article
4 six, chapter twenty-nine-a of this code.

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

6 **NEWSPAPERS; LEGAL ADVERTISEMENTS.**

7 **ARTICLE 1. FEES AND ALLOWANCES.**

8 **§59-1-2. Fees to be charged by Secretary of State.**

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

13 (1) For filing, recording, indexing, preserving a record of
14 and issuing a certificate relating to the formation, amendment,
15 change of name, registration of trade name, merger, consolidation,
16 conversion, renewal, dissolution, termination, cancellation,
17 withdrawal revocation and reinstatement of business entities
18 organized within the state, as follows:

19 (A) Articles of incorporation of for-profit corporation, \$50;

20 (B) Articles of incorporation of nonprofit corporation, \$25;

21 (C) Articles of organization of limited liability company,

22 \$100;

23 (D) Agreement of a general partnership, \$50;

- 1 (E) Certificate of a limited partnership, \$100;
- 2 (F) Agreement of a voluntary association, \$50;
- 3 (G) Articles of organization of a business trust, \$50;
- 4 (H) Amendment or correction of articles of incorporation,
5 including change of name or increase of capital stock, in addition
6 to any applicable license tax, \$25;
- 7 (I) Amendment or correction, including change of name, of
8 articles of organization of business trust, limited liability
9 partnership, limited liability company or professional limited
10 liability company or of certificate of limited partnership or
11 agreement of voluntary association, \$25;
- 12 (J) Amendment and restatement of articles of incorporation,
13 certificate of limited partnership, agreement of voluntary
14 association or articles of organization of limited liability
15 partnership, limited liability company or professional limited
16 liability company or business trust, \$25;
- 17 (K) Registration of trade name, otherwise designated as a true
18 name, fictitious name or D.B.A. (doing business as) name for any
19 domestic business entity as permitted by law, \$25;
- 20 (L) Articles of merger of two corporations, limited
21 partnerships, limited liability partnerships, limited liability
22 companies or professional limited liability companies, voluntary
23 associations or business trusts, \$25, and for each additional party
24 to the merger in excess of two, \$15;

1 ~~(M) Plus for each additional party to the merger in excess of~~
2 ~~two: \$15.00~~

3 ~~(N)~~ (M) Statement of conversion, when permitted, from one
4 business entity into another business entity, in addition to the
5 cost of filing the appropriate documents to organize the surviving
6 entity, \$25;

7 ~~(O)~~ (N) Articles of dissolution of a corporation, voluntary
8 association or business trust or statement of dissolution of a
9 general partnership, \$25;

10 ~~(P)~~ (O) Revocation of voluntary dissolution of a corporation,
11 voluntary association or business trust, \$15;

12 ~~(Q)~~ (P) Articles of termination of a limited liability
13 company, cancellation of a limited partnership or statement of
14 withdrawal of limited liability partnership, \$25; and

15 ~~(R)~~ (Q) Reinstatement of a domestic or foreign limited
16 liability company, ~~or~~ a professional limited liability company ~~or~~
17 a domestic or foreign corporation after administrative dissolution
18 or revocation, \$25.

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

24 (A) Certificate of authority of for-profit corporation,

- 1 \$100.00;
- 2 (B) Certificate of authority of nonprofit corporation, \$50.00;
- 3 (C) Certificate of authority of foreign limited liability
4 companies, \$150;
- 5 (D) Certificate of exemption from certificate of authority,
6 \$25;
- 7 (E) Registration of a general partnership, \$50;
- 8 (F) Registration of a limited partnership, \$150;
- 9 (G) Registration of a limited liability partnership for two-
10 year term, \$500;
- 11 (H) Registration of a voluntary association, \$50;
- 12 (I) Registration of a trust or business trust, \$50;
- 13 (J) Amendment or correction of certificate of authority of a
14 foreign corporation, including change of name or increase of
15 capital stock, in addition to any applicable license tax, \$25;
- 16 (K) Amendment or correction of certificate of limited
17 partnership, limited liability partnership, limited liability
18 company or professional limited liability company, voluntary
19 association or business trust, \$25;
- 20 (L) Registration of trade name, otherwise designated as a true
21 name, fictitious name or D.B.A. (doing business as) name for any
22 foreign business entity as permitted by law, \$25;
- 23 (M) Amendment and restatement of certificate of authority or
24 of registration of a corporation, limited partnership, limited

1 liability partnership, limited liability company or professional
2 limited liability company, voluntary association or business trust,
3 \$25;

4 (N) Articles of merger of two corporations, limited
5 partnerships, limited liability partnerships, limited liability
6 companies or professional limited liability companies, voluntary
7 associations or business trusts, \$25, and for each addition party
8 to the merger in excess of two, \$5;

9 ~~(O) Plus for each additional party to the merger in excess of~~
10 ~~two 5.00~~

11 ~~(P)~~ (O) Statement of conversion, when permitted, from one
12 business entity into another business entity, in addition to the
13 cost of filing the appropriate articles or certificate to organize
14 the surviving entity, \$25; and

15 ~~(O)~~ (P) Certificate of withdrawal or cancellation of a
16 corporation, limited partnership, limited liability partnership,
17 limited liability company, voluntary association or business trust,
18 \$25.

19 Notwithstanding any other provision of this section to the
20 contrary, after June 13, 2008, the fees described in this
21 subdivision that are collected for the issuance of a certificate
22 relating to the initial registration of a corporation, limited
23 partnership, domestic limited liability company or foreign limited
24 liability company shall be deposited in the general administrative

1 fees account established by this section.

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

8 (4) For receiving, filing and preserving a reservation of a
9 name for each one hundred twenty days or for any other period in
10 excess of seven days prescribed by law for a corporation, limited
11 partnership, limited liability partnership or limited liability
12 company, \$15.

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

15 (A) Certificate of good standing of a domestic or foreign
16 corporation, \$10;

17 (B) Certificate of existence of a domestic limited liability
18 company, and certificate of authorization foreign limited liability
19 company, \$10;

20 (C) Certificate of existence of any business entity, trademark
21 or service mark registered with the Secretary of State, \$10;

22 (D) Certified copy of corporate charter or comparable
23 organizing documents for other business entities, \$15;

24 (E) Plus, for each additional amendment, restatement or other

1 additional document, \$5;

2 (F) Certificate of registration of the name of a foreign
3 corporation, limited liability company, limited partnership or
4 limited liability partnership, \$25;

5 (G) ~~And~~ For the annual renewal of the name registration, \$10;
6 and

7 (H) Any other certificate not specified in this subdivision,
8 \$10.

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

11 (A) Certificate or apostille relating to the authority of
12 certain public officers, including the membership of boards and
13 commissions, \$10;

14 (B) ~~Plus,~~ For each additional certificate pertaining to the
15 same transaction, \$5;

16 (C) Any other certificate not specified in this subdivision,
17 \$10;

18 (D) For acceptance, indexing and recordation of service of
19 process any corporation, limited partnership, limited liability
20 partnership, limited liability company, voluntary association,
21 business trust, insurance company, person or other entity as
22 permitted by law, \$15;

23 (E) For shipping and handling expenses for execution of
24 service of process by certified mail upon any defendant within the

1 United States, which fee is to be deposited to the special revenue
2 account established in this section for the operation of the office
3 of the Secretary of State, \$5; and

4 (F) For shipping and handling expenses for execution of
5 service of process upon any defendant outside the United States by
6 registered mail, which fee is to be deposited to the special
7 revenue account established in this section for the operation of
8 the office of the Secretary of State, \$15.

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

12 (A) For any search of archival records maintained at sites
13 other than the office of the Secretary of State, no less than \$10;

14 (B) For searches of archival records maintained at sites other
15 than the office of the Secretary of State which require more than
16 one hour, for each hour or fraction of an hour consumed in making
17 such search, \$10;

18 (C) For any search of records maintained on site for the
19 purpose of obtaining copies of documents or printouts of data, \$5;

20 (D) For any search of records maintained in electronic format
21 which requires special programming to be performed by the state
22 information services agency or other vendor any actual cost but not
23 less than, \$25, which cost is in addition to the cost of any copies
24 of printouts prepared or any certificate issued pursuant to or

1 based on the search; and

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)~~ (E) For recording any paper for which no specific fee is
6 prescribed, \$5.

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;

11 (B) For each sheet after the first, \$.50;

12 (C) For sending the copies or lists by fax transmission, \$5;

13 (D) For producing and providing photocopies of lists, reports,
14 guidelines and other documents produced in multiple copies for
15 general public use, a publication price to be established by the
16 Secretary of State at a rate approximating \$2 plus \$.10 per page
17 and rounded to the nearest dollar; and

18 (E) For electronic copies of records obtained in data format
19 on disk, the cost of the record in the least expensive available
20 printed format, plus, for each required disk, which shall be
21 provided by the Secretary of State, \$5.

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

1 State.

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

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

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

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

1 and service charges established in the following sections and for
2 the following purposes shall be deposited by the Secretary of State
3 or other collecting agency to that special revenue account and used
4 for the operation of the office of the Secretary of State:

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

8 (2) The fees received for the sale of the State Register, Code
9 of State Rules and other copies established by rule and authorized
10 by section seven, article two, chapter twenty-nine-a of this code;

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

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

24 (5) The filing fees and search and copying fees for uniform

1 commercial code transactions established by section five hundred
2 twenty-five, article nine, chapter forty-six of this code;

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

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

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

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

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

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

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

24 (13) All registration, license and other fees collected by the

1 Secretary of State not specified in this section.

2 (g) Any balance in the service fees and collections account
3 established by this section which exceeds \$500,000 as of June 30,
4 2003, and each year thereafter, ~~shall be expired~~ expires to the
5 state fund, General Revenue Fund.

6 (h) (1) Effective July 1, 2008, there is hereby created in the
7 State Treasury a special revenue account to be known as the general
8 administrative fees account. Expenditures from the account shall be
9 used for the operation of the Office of the Secretary of State and
10 are not authorized from collections but are to be made only in
11 accordance with appropriation by the Legislature and in accordance
12 with the provisions of article three, chapter twelve of this code
13 and upon the fulfillment of the provisions set forth in article
14 two, chapter eleven-b of this code. ~~Provided, That~~ For the fiscal
15 year ending June 30, 2009, expenditures are authorized from
16 collections rather than pursuant to an appropriation by the
17 Legislature. Any balance in the account at the end of each fiscal
18 year shall not revert to the General Revenue Fund but shall remain
19 in the fund and be expended as provided by this subsection.

20 (2) After June 30, 2008, all the fees and service charges
21 established in section two-a of this article for the following
22 purposes shall be collected and deposited by the Secretary of State
23 or other collecting agency in the general administrative fees
24 account and used for the operation of the Office of the Secretary

1 of State:

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

5 (B) The fees for the issuance of a certificate relating to the
6 initial registration of a corporation, limited partnership,
7 domestic limited liability company or foreign limited liability
8 company described in subdivision (2), subsection (a) of this
9 section; and

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

13 (i) There is continued in the office of the Secretary of State
14 a noninterest bearing, escrow account to be known as the "prepaid
15 fees and services account". This account ~~shall be~~ is for the
16 purpose of allowing customers of the Secretary of State to prepay
17 for services, with payment to be held in escrow until services are
18 rendered. Payments deposited in the account shall remain in the
19 account until services are rendered by the Secretary of State and
20 at that time the fees will be reallocated to the appropriate
21 general or special revenue accounts. There shall be no fee charged
22 by the Secretary of State to the customer for the use of this
23 account and the customer may request the return of any moneys
24 maintained in the account at any time without penalty. The assets

1 of the prepaid fees and services account do not constitute public
2 funds of the state and are available solely for carrying out the
3 purposes of this section.

NOTE: The purpose of this bill is to provide a procedure for foreign profit and nonprofit corporations to reinstate in the same manner as is already provided for limited liability companies.

§31D-15-1533 and §31E-14-1533 are new ; therefore, they have been completely underscored.

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