

COMMITTEE SUBSTITUTE

for

H. B. 2554

(BY DELEGATES MORGAN, STEPHENS, STAGGERS, HARTMAN,
JONES, DISERIO AND LYNCH)

(Originating in the Committee on the Judiciary)

[March 6, 2013]

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; establishing a fee for reinstatement; and establishing a fee for parties to corporate mergers.

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

CHAPTER 31D. WEST VIRGINIA

BUSINESS CORPORATION ACT.

ARTICLE 15. FOREIGN CORPORATIONS.

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

- 1 (a) ~~A foreign corporation may appeal the Secretary of State's~~
- 2 ~~revocation of its certificate of authority to the circuit court within~~
- 3 ~~thirty days after service of the certificate of revocation is~~
- 4 ~~perfected pursuant to section one thousand five hundred ten of~~
- 5 ~~this article. The foreign corporation appeals by petitioning the~~
- 6 ~~circuit court to set aside the revocation and attaching to the~~
- 7 ~~petition copies of its certificate of authority and the Secretary of~~
- 8 ~~State's certificate of revocation.~~

9 ~~(b) The circuit court may summarily order the Secretary of~~
10 ~~State to reinstate the certificate of authority or may take any~~
11 ~~other action the circuit court considers appropriate. (c)The~~
12 ~~circuit court's final decision may be appealed as in other civil~~
13 ~~proceedings.~~

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

19 (1) Recite the name of the corporation and the effective date
20 of the administrative revocation;

21 (2) Demonstrate that the ground or grounds for revocation
22 have been eliminated;

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

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

28 (b) If the Secretary of State determines that the application
29 contains the information required by subsection (a) of this

30 section and that the information is accurate, the Secretary of
31 State shall cancel the Certificate of Revocation and prepare a
32 Certificate of Reinstatement that recites the Secretary of State's
33 determination and the effective date of reinstatement. The
34 Secretary of State shall send notice of the reinstatement to the
35 corporation within thirty days of the determination.

36 (c) When a reinstatement is granted, the reinstatement relates
37 back to and takes effect as of the effective date of the administra-
38 tive revocation and the corporation resumes its business as if the
39 administrative revocation had never occurred.

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

2 (a) If the Secretary of State denies a corporation's applica-
3 tion for reinstatement following administrative revocation, the
4 Secretary of State shall notify the corporation within thirty days
5 of application by written notice that explains the reason or
6 reasons for denial.

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

10 (c) The corporation may appeal by petitioning the circuit
11 court of Kanawha County to set aside the revocation and

12 attaching to the petition copies of the Secretary of State's
13 Certificate of Revocation, the corporation's application for
14 reinstatement and the Secretary of State's notice of denial.

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

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

ARTICLE 14. FOREIGN CORPORATIONS.

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

1 (a) ~~A foreign corporation may appeal the Secretary of State's~~
2 ~~revocation of its certificate of authority to the circuit court within~~
3 ~~thirty days after service of the certificate of revocation is~~
4 ~~perfected pursuant to section one thousand four hundred ten of~~
5 ~~this article. The foreign corporation appeals by petitioning the~~
6 ~~circuit court to set aside the revocation and attaching to the~~
7 ~~petition copies of its certificate of authority and the Secretary of~~
8 ~~State's certificate of revocation.~~

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

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

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

19 (1) Recite the name of the corporation and the effective date
20 of the administrative revocation;

21 (2) Demonstrate that the ground or grounds for revocation
22 have been eliminated;

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

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

28 (b) If the Secretary of State determines that the application
29 contains the information required by subsection (a) of this
30 section and that the information is accurate, the Secretary of
31 State shall cancel the Certificate of Revocation and prepare a

32 Certificate of Reinstatement that recites the Secretary of State's
33 determination and the effective date of reinstatement. The
34 Secretary of State shall send notice of the reinstatement to the
35 corporation within thirty days of the determination.

36 (c) When a reinstatement is granted, the reinstatement relates
37 back to and takes effect as of the effective date of the administra-
38 tive revocation and the corporation resumes its business as if the
39 administrative revocation had never occurred.

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

1 (a) If the Secretary of State denies a corporation's applica-
2 tion for reinstatement following administrative revocation, the
3 Secretary of State shall notify the corporation within thirty days
4 of application by written notice that explains the reason or
5 reasons for denial.

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

9 (c) The corporation may appeal by petitioning the circuit
10 court of Kanawha County to set aside the revocation and
11 attaching to the petition copies of the Secretary of State's

12 Certificate of Revocation, the corporation's application for
13 reinstatement and the Secretary of State's notice of denial.

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

CHAPTER 59. FEES, ALLOWANCES AND COSTS;

NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

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

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

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

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

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

13 (C) Articles of organization of limited liability company,
14 \$100;

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

16 (E) Certificate of a limited partnership, \$100;

17 (F) Agreement of a voluntary association, \$50;

18 (G) Articles of organization of a business trust, \$50;

19 (H) Amendment or correction of articles of incorporation,
20 including change of name or increase of capital stock, in addition
21 to any applicable license tax, \$25;

22 (I) Amendment or correction, including change of name, of
23 articles of organization of business trust, limited liability
24 partnership, limited liability company or professional limited
25 liability company or of certificate of limited partnership or
26 agreement of voluntary association, \$25;

27 (J) Amendment and restatement of articles of incorporation,
28 certificate of limited partnership, agreement of voluntary
29 association or articles of organization of limited liability
30 partnership, limited liability company or professional limited
31 liability company or business trust, \$25;

32 (K) Registration of trade name, otherwise designated as a
33 true name, fictitious name or D.B.A. (doing business as) name
34 for any domestic business entity as permitted by law, \$25;

35 (L) Articles of merger of two corporations, limited partner-
36 ships, limited liability partnerships, limited liability companies
37 or professional limited liability companies, voluntary associa-
38 tions or business trusts, \$25, and for each additional party to the
39 merger in excess of two, \$5;

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

42 ~~(N)~~ (M) Statement of conversion, when permitted, from one
43 business entity into another business entity, in addition to the
44 cost of filing the appropriate documents to organize the surviv-
45 ing entity, \$25;

46 ~~(O)~~ (N) Articles of dissolution of a corporation, voluntary
47 association or business trust or statement of dissolution of a
48 general partnership, \$25;

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

51 ~~(Q)~~ (P) Articles of termination of a limited liability com-
52 pany, cancellation of a limited partnership or statement of
53 withdrawal of limited liability partnership, \$25; and

54 ~~(R)~~ (Q) Reinstatement of a domestic or foreign limited
55 liability company, ~~or~~ a professional limited liability company or

56 a domestic or foreign corporation after administrative dissolution
57 or revocation, \$25.

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

63 (A) Certificate of authority of for-profit corporation,
64 \$100.00;

65 (B) Certificate of authority of nonprofit corporation, \$50.00;

66 (C) Certificate of authority of foreign limited liability
67 companies, \$150;

68 (D) Certificate of exemption from certificate of authority,
69 \$25;

70 (E) Registration of a general partnership, \$50;

71 (F) Registration of a limited partnership, \$150;

72 (G) Registration of a limited liability partnership for two-
73 year term, \$500;

74 (H) Registration of a voluntary association, \$50;

75 (I) Registration of a trust or business trust, \$50;

76 (J) Amendment or correction of certificate of authority of a
77 foreign corporation, including change of name or increase of
78 capital stock, in addition to any applicable license tax, \$25;

79 (K) Amendment or correction of certificate of limited
80 partnership, limited liability partnership, limited liability
81 company or professional limited liability company, voluntary
82 association or business trust, \$25;

83 (L) Registration of trade name, otherwise designated as a
84 true name, fictitious name or D.B.A. (doing business as) name
85 for any foreign business entity as permitted by law, \$25;

86 (M) Amendment and restatement of certificate of authority
87 or of registration of a corporation, limited partnership, limited
88 liability partnership, limited liability company or professional
89 limited liability company, voluntary association or business
90 trust, \$25;

91 (N) Articles of merger of two corporations, limited partner-
92 ships, limited liability partnerships, limited liability companies
93 or professional limited liability companies, voluntary associa-
94 tions or business trusts, \$25, and for each addition party to the
95 merger in excess of two, \$5;

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

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

102 ~~(Q)~~ (P) Certificate of withdrawal or cancellation of a
103 corporation, limited partnership, limited liability partnership,
104 limited liability company, voluntary association or business
105 trust, \$25.

106 Notwithstanding any other provision of this section to the
107 contrary, after June 13, 2008, the fees described in this subdivi-
108 sion that are collected for the issuance of a certificate relating to
109 the initial registration of a corporation, limited partnership,
110 domestic limited liability company or foreign limited liability
111 company shall be deposited in the general administrative fees
112 account established by this section.

113 (3) For receiving, filing and recording a change of the
114 principal or designated office, change of the agent of process
115 and/or change of officers, directors, partners, members or

116 managers, as the case may be, of a corporation, limited partner-
117 ship, limited liability partnership, limited liability company or
118 other business entity as provided by law, \$15.

119 (4) For receiving, filing and preserving a reservation of a
120 name for each one hundred twenty days or for any other period
121 in excess of seven days prescribed by law for a corporation,
122 limited partnership, limited liability partnership or limited
123 liability company, \$15.

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

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

128 (B) Certificate of existence of a domestic limited liability
129 company, and certificate of authorization foreign limited liability
130 company, \$10;

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

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

135 (E) Plus, for each additional amendment, restatement or
136 other additional document, \$5;

137 (F) Certificate of registration of the name of a foreign
138 corporation, limited liability company, limited partnership or
139 limited liability partnership, \$25;

140 (G) ~~And~~ For the annual renewal of the name registration,
141 \$10; and

142 (H) Any other certificate not specified in this subdivision,
143 \$10.

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

146 (A) Certificate or apostille relating to the authority of certain
147 public officers, including the membership of boards and com-
148 missions, \$10;

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

151 (C) Any other certificate not specified in this subdivision,
152 \$10;

153 (D) For acceptance, indexing and recordation of service of
154 process any corporation, limited partnership, limited liability
155 partnership, limited liability company, voluntary association,
156 business trust, insurance company, person or other entity as
157 permitted by law, \$15;

158 (E) For shipping and handling expenses for execution of
159 service of process by certified mail upon any defendant within
160 the United States, which fee is to be deposited to the special
161 revenue account established in this section for the operation of
162 the office of the Secretary of State, \$5; and

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

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

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

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

177 (C) For any search of records maintained on site for the
178 purpose of obtaining copies of documents or printouts of data,
179 \$5;

180 (D) For any search of records maintained in electronic
181 format which requires special programming to be performed by
182 the state information services agency or other vendor any actual
183 cost but not less than, \$25, which cost is in addition to the cost
184 of any copies of printouts prepared or any certificate issued
185 pursuant to or based on the search; and

186 ~~(E) The cost of the search is in addition to the cost of any~~
187 ~~copies or printouts prepared or any certificate issued pursuant to~~
188 ~~or based on the search.~~

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

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

193 (A) For a copy of any paper or printout of electronic data, if
194 one sheet, \$1;

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

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

197 (D) For producing and providing photocopies of lists,
198 reports, guidelines and other documents produced in multiple
199 copies for general public use, a publication price to be estab-

200 lished by the Secretary of State at a rate approximating \$2 plus
201 \$.10 per page and rounded to the nearest dollar; and

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

206 (b) The Secretary of State may propose legislative rules for
207 promulgation for charges for on-line electronic access to
208 database information or other information maintained by the
209 Secretary of State.

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

213 (d) The records maintained by the Secretary of State are
214 prepared and indexed at the expense of the state and those
215 records ~~shall~~ may not be obtained for commercial resale without
216 the written agreement of the state to a contract including
217 reimbursement to the state for each instance of resale.

218 (e) The Secretary of State may provide printed or electronic
219 information free of charge as he or she considers necessary and

220 efficient for the purpose of informing the general public or the
221 news media.

222 (f) There is hereby continued in the State Treasury a special
223 revenue account to be known as the “service fees and collec-
224 tions” account. Expenditures from the account shall be used for
225 the operation of the office of the Secretary of State and are not
226 authorized from collections but are to be made only in accor-
227 dance with appropriation by the Legislature and in accordance
228 with the provisions of article three, chapter twelve of this code
229 and upon the fulfillment of the provisions set forth in article two,
230 chapter five-a of this code. Notwithstanding any other provision
231 of this code to the contrary, except as provided in subsection (h)
232 of this section and section two-a of this article, one half of all the
233 fees and service charges established in the following sections
234 and for the following purposes shall be deposited by the Secre-
235 tary of State or other collecting agency to that special revenue
236 account and used for the operation of the office of the Secretary
237 of State:

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

241 (2) The fees received for the sale of the State Register, Code
242 of State Rules and other copies established by rule and autho-
243 rized by section seven, article two, chapter twenty-nine-a of this
244 code;

245 (3) The registration fees, late fees and legal settlements
246 charged for registration and enforcement of the charitable
247 organizations and professional solicitations established in
248 sections five, nine and fifteen-b, article nineteen, chapter twenty-
249 nine of this code;

250 (4) The annual attorney-in-fact fee for limited liability
251 companies as designated in section one hundred eight, article
252 one, chapter thirty-one-b of this code and established in section
253 two hundred eleven, article two of said chapter. ~~Provided, That~~
254 After June 30, 2008, the annual report fees designated in section
255 one hundred eight, article one, chapter thirty-one-b of this code
256 shall upon collection be deposited in the general administrative
257 fees account described in subsection (h) of this section;

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

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

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

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

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

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

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

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

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

284 (g) Any balance in the service fees and collections account
285 established by this section which exceeds \$500,000 as of June
286 30, 2003, and each year thereafter, ~~shall be expired~~ expires to the
287 state fund, General Revenue Fund.

288 (h)(1) Effective July 1, 2008, there is hereby created in the
289 State Treasury a special revenue account to be known as the
290 general administrative fees account. Expenditures from the
291 account shall be used for the operation of the Office of the
292 Secretary of State and are not authorized from collections but are
293 to be made only in accordance with appropriation by the
294 Legislature and in accordance with the provisions of article
295 three, chapter twelve of this code and upon the fulfillment of the
296 provisions set forth in article two, chapter eleven-b of this code.

297 ~~Provided, That~~ For the fiscal year ending June 30, 2009,
298 expenditures are authorized from collections rather than pursuant
299 to an appropriation by the Legislature. Any balance in the
300 account at the end of each fiscal year shall not revert to the
301 General Revenue Fund but shall remain in the fund and be
302 expended as provided by this subsection.

303 (2) After June 30, 2008, all the fees and service charges
304 established in section two-a of this article for the following
305 purposes shall be collected and deposited by the Secretary of
306 State or other collecting agency in the general administrative
307 fees account and used for the operation of the Office of the
308 Secretary of State:

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

312 (B) The fees for the issuance of a certificate relating to the
313 initial registration of a corporation, limited partnership, domestic
314 limited liability company or foreign limited liability company
315 described in subdivision (2), subsection (a) of this section; and

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

319 (i) There is continued in the office of the Secretary of State
320 a noninterest bearing, escrow account to be known as the
321 "prepaid fees and services account". This account ~~shall be~~ is for
322 the purpose of allowing customers of the Secretary of State to

323 prepay for services, with payment to be held in escrow until
324 services are rendered. Payments deposited in the account shall
325 remain in the account until services are rendered by the Secre-
326 tary of State and at that time the fees will be reallocated to the
327 appropriate general or special revenue accounts. There shall be
328 no fee charged by the Secretary of State to the customer for the
329 use of this account and the customer may request the return of
330 any moneys maintained in the account at any time without
331 penalty. The assets of the prepaid fees and services account do
332 not constitute public funds of the state and are available solely
333 for carrying out the purposes of this section.