

H. B. 4525

(By Delegates Morgan, Poore, D. Poling,
Manypenny and Sponaugle)
[Introduced February 13, 2014; referred to the
Committee on Small Business, Entrepreneurship and
Economic Development then the Judiciary.]

A bill to amend and reenact §59-1-2a of the Code of West Virginia,
1931, as amended, relating to eliminating late fees charged by
the Secretary of State; eliminating fees charged to domestic
corporations, foreign corporations, domestic limited liability
companies, and foreign limited liability companies for the
late filing of annual reports.

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.**

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

(1) "Annual report" means the report described in subsection
(d) of this section that is to be filed with the Secretary of State
each year by each corporation, limited partnership, domestic
limited liability company, and foreign limited liability company

1 engaged in or authorized to do business in this state.

2 ~~(1)~~ (2) "Annual report fee" means the fee described in
3 subsection (c) of this section that is to be paid to the Secretary
4 of State each year by corporations, limited partnerships, domestic
5 limited liability companies and foreign limited liability
6 companies. ~~After June 30, 2008, any reference in this code to a~~
7 ~~fee paid to the Secretary of State for services as a statutory~~
8 ~~attorney in fact shall mean the annual report fee described in this~~
9 ~~section.~~

10 ~~(2)~~ (3) "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 (b),
14 section one thousand five hundred one, article fifteen, chapter
15 thirty-one-d of this code, except for the activity of conducting
16 affairs in interstate commerce when activity occurs in this state,
17 nor does it mean any of the activities of foreign limited liability
18 companies enumerated in subsection (a), section one thousand three,
19 article ten, chapter thirty-one-b of this code except for the
20 activity of conducting affairs in interstate commerce when activity
21 occurs in this state.

22 ~~(3)~~ (4) "Corporation" means a "domestic corporation", a
23 "foreign corporation" or a "nonprofit corporation".

24 ~~(4)~~ (5) "Deliver or delivery" means any method of delivery
25 used in conventional commercial practice, including, but not
26 limited to, delivery by hand, mail, commercial delivery and

1 electronic transmission.

2 ~~(5)~~ (6) "Domestic corporation" means a corporation for profit
3 which is not a foreign corporation incorporated under or subject to
4 chapter thirty-one-d of this code.

5 ~~(6)~~ (7) "Domestic limited liability company" means a limited
6 liability company which is not a foreign limited liability company
7 under or subject to chapter thirty-one-b of this code.

8 ~~(7)~~ (8) "Foreign corporation" means a for-profit corporation
9 incorporated under a law other than the laws of this state.

10 ~~(8)~~ (9) "Foreign limited liability company" means a limited
11 liability company organized under a law other than the laws of this
12 state.

13 ~~(9)~~ (10) "Limited partnership" means a partnership as defined
14 by section one, article nine, chapter forty-seven of this code.

15 ~~(10)~~ (11) "Nonprofit corporation" means a nonprofit
16 corporation as defined by section one hundred fifty, article one,
17 chapter thirty-one-e of this code.

18 ~~(11)~~ (12) "Registration fee" means the fee for the issuance of
19 a certificate relating to the initial registration of a
20 corporation, limited partnership, domestic limited liability
21 company or foreign limited liability company described in
22 subdivision (2), subsection (a), section two of this article. The
23 term "initial registration" also means the date upon which the
24 registration fee is paid.

25 (b) *Required payment of annual report fee and filing of annual*
26 *report.* -- ~~After June 30, 2008,~~ No corporation, limited

1 partnership, domestic limited liability company or foreign limited
2 liability company may engage in any business activity in this state
3 without paying the annual report fee and filing the annual report
4 as required by this section.

5 (c) *Annual report fee.* -- ~~After June 30, 2008,~~ Each
6 corporation, limited partnership, domestic limited liability
7 company and foreign limited liability company engaged in or
8 authorized to do business in this state shall pay an annual report
9 fee of \$25 for the services of the Secretary of State as
10 attorney-in-fact for the corporation, limited partnership, domestic
11 limited liability company or foreign limited liability company, and
12 for such other administrative services as may be imposed by law
13 upon the Secretary of State. The fee is due and payable each year
14 after the initial registration of the corporation, limited
15 partnership, domestic limited liability company or foreign limited
16 liability company with the annual report described in subsection
17 (d) of this section ~~on or before the dates specified in subsection~~
18 ~~(e) of this section. The fee is due and payable each year with the~~
19 ~~annual report from corporations, limited partnerships, domestic~~
20 ~~limited liability companies and foreign limited liability companies~~
21 ~~that paid the registration fee prior to July 1, 2008, on or before~~
22 ~~the dates specified in subsection (e) of this section.~~ before July
23 1 of each year. The annual report fees received by the Secretary of
24 State pursuant to this subsection shall be deposited by the
25 Secretary of State in the general administrative fees account
26 established by section two of this article.

1 (d) *Annual report.* -- ~~(1) After June 30, 2008, each~~
2 ~~corporation, limited partnership, domestic limited liability~~
3 ~~company and foreign limited liability company engaged in or~~
4 ~~authorized to do business in this state shall file an annual~~
5 ~~report. The report is due each year after the initial registration~~
6 ~~of the corporation, limited partnership, domestic limited liability~~
7 ~~company or foreign limited liability company with the annual report~~
8 ~~fee described in subsection (c) of this section on or before the~~
9 ~~dates specified in subsection (e) of this section. The report is~~
10 ~~due each year from corporations, limited partnerships, domestic~~
11 ~~limited liability companies and foreign limited liability companies~~
12 ~~that paid the registration fee prior to July 1, 2008, on or before~~
13 ~~the dates specified in subsection (e) of this section.~~

14 ~~(2)~~ ~~(A)~~ (1) The annual report shall be filed with the
15 Secretary of State on forms provided by the Secretary of State for
16 that purpose. The annual report shall, in the case of
17 corporations, contain:

18 ~~(i)~~ (A) The address of the corporation's principal office;

19 ~~(ii)~~ (B) The names and mailing addresses of its officers and
20 directors;

21 ~~(iii)~~ (C) The name and mailing address of the person on whom
22 notice of process may be served;

23 ~~(iv)~~ (D) The name and address of the corporation's parent
24 corporation and of each subsidiary of the corporation licensed to
25 do business in this state;

26 ~~(v)~~ (E) In the case of limited partnerships domestic limited

1 liability companies and foreign limited liability companies,
2 similar information with respect to their principal or controlling
3 interests as determined by the Secretary of State or otherwise
4 required by law to be reported to the Secretary of State;

5 ~~(vi)~~ (F) The county or county code in which the principal
6 office address or mailing address of the company is located;

7 ~~(vii)~~ (G) Business class code; and

8 ~~(viii)~~ (H) Any other information the Secretary of State
9 considers appropriate.

10 ~~(B)~~ (2) Notwithstanding any other provision of law to the
11 contrary, the Secretary of State shall, upon request of any person,
12 disclose, with respect to corporations, ~~(i) The address of the~~
13 ~~corporation's principal office; (ii) the names and addresses of its~~
14 ~~officers and directors; (iii) the name and mailing address of the~~
15 ~~person on whom notice of process may be served; (iv) the name and~~
16 ~~address of each subsidiary of the corporation and the corporation's~~
17 ~~parent corporation; (v) the county or county code in which the~~
18 ~~principal office address or mailing address of the company is~~
19 ~~located; and (vi) the business class code. The Secretary of State~~
20 ~~shall provide similar information with respect to information in~~
21 ~~its possession relating to limited partnerships domestic limited~~
22 ~~liability companies and foreign limited liability companies,~~
23 ~~similar information with respect to their principal or controlling~~
24 ~~interests. the information required by clauses (A) through (G), of~~
25 subdivision (1) of this subsection.

26 ~~(c) Annual reports and fees due July 1. -- Each domestic and~~

1 ~~foreign corporation, limited partnership, limited liability company~~
2 ~~and foreign limited liability company shall file with the Secretary~~
3 ~~of State the annual report and pay the annual report fee by July 1~~
4 ~~of each year.~~

5 ~~(f) Deposit of fees. -- The annual report fees received by the~~
6 ~~Secretary of State pursuant to this section shall be deposited by~~
7 ~~the Secretary of State in the general administrative fees account~~
8 ~~established by section two, article one, chapter fifty nine of this~~
9 ~~code.~~

10 ~~(g) (1) Duty to pay. -- It shall be the duty of each~~
11 ~~corporation, limited partnership, limited liability company and~~
12 ~~foreign limited liability company required to pay the annual report~~
13 ~~fees imposed under this article, to remit them with a properly~~
14 ~~completed annual report to the Secretary of State, and if it fails~~
15 ~~to do so it shall be subject to the late fees prescribed in~~
16 ~~subsection (h) of this article and dissolution or revocation,~~
17 ~~pursuant to this code: Provided, That before dissolution or~~
18 ~~revocation for failure to pay fees may occur, the Secretary of~~
19 ~~State shall notify the entity by certified mail, return receipt~~
20 ~~requested, of its failure to pay, all late fees or bad check fees~~
21 ~~associated with the failure to pay and the date upon which~~
22 ~~dissolution or revocation will occur if all fees are not paid in~~
23 ~~full. The certified mail required by this subdivision shall be~~
24 ~~postmarked at least thirty days before the dissolution or~~
25 ~~revocation date listed in the notice.~~

26 ~~(2) Bad check fee. -- If any corporation, limited partnership,~~

~~1 limited liability company or foreign limited liability company
2 submits payment by check or money order for the annual report fee
3 imposed under this article and the check or money order is rejected
4 because there are insufficient funds in the account or the account
5 is closed, the Secretary of State shall assess a bad check fee to
6 the corporation, limited partnership, limited liability company or
7 foreign limited liability company that is equivalent to the service
8 charge paid by the Secretary of State due to the rejected check or
9 money order. The bad check fee assessed under this subdivision
10 shall be deposited into the account or accounts from which the
11 Secretary of State paid the service charge.~~

~~12 (h) Late fees. -- (1) The following late fees shall be in
13 addition to any other penalties and remedies available elsewhere in
14 this code:~~

~~15 (A) Administrative late fee. -- The Secretary of State shall
16 assess upon each corporation, limited partnership, limited
17 liability company and foreign limited liability company delinquent
18 in the payment of an annual report fee or the filing of an annual
19 report an administrative late fee in the amount of \$50.~~

~~20 (B) Administrative late fees for nonprofit corporations. --
21 The Secretary of State shall assess each nonprofit corporation
22 delinquent in the payment of an annual report fee or the filing of
23 an annual report an administrative late fee in the amount of \$25.~~

~~24 (2) The Secretary of State shall deposit the first \$25,000 of
25 fees collected under this subsection into the general
26 administrative fees account established in subsection (h), section~~

1 ~~two of this article, and shall deposit any additional fees~~
2 ~~collected under this section into the General Revenue Fund of the~~
3 ~~state.~~

4 ~~(i) (e) Reports to Tax Commissioner; suspension, cancellation~~
5 ~~or withholding of business registration certificate. --~~

6 (1) The Secretary of State shall, within twenty days after the
7 close of each month, make a report to the Tax Commissioner for the
8 preceding month, in which he or she shall set out the name of every
9 business entity to which he or she issued a certificate to conduct
10 business in the State of West Virginia during that month. The
11 report shall set out the names and addresses all corporations,
12 limited partnerships, limited liability companies and foreign
13 limited liability companies to which he or she issued certificates
14 of change of name or of change of location of principal office,
15 dissolution, withdrawal or merger. If the Secretary of State fails
16 to make the report, it shall be the duty of the Tax Commissioner to
17 report such failure to the Governor. A writ of mandamus shall lie
18 for correction of such failure.

19 (2) Notwithstanding any other provisions of this code to the
20 contrary, upon receipt of notice from the Secretary of State that
21 a corporation, limited partnership, limited liability company and
22 foreign limited liability company is more than thirty days
23 delinquent in the payment of annual report fees or in the filing of
24 an annual report required by this section, the Tax Commissioner may
25 suspend, cancel or withhold a business registration certificate
26 issued to or applied for by the delinquent corporation, limited

1 partnership, limited liability company or foreign limited liability
2 company until the same is paid and filed in the manner provided for
3 the suspension, cancellation or withholding of business
4 registration certificates for other reasons under article twelve,
5 chapter eleven of this code.

6 ~~(j)~~ (f) *Purchase of data.* -- The Secretary of State will
7 provide electronically, for purchase, any data maintained in the
8 Secretary of State's Business Organizations Database. For the
9 electronic purchase of the entire Business Organizations Database,
10 the cost is \$12,000. For the purchase of the monthly updates of
11 the Business Organizations Database, the cost is \$1,000 per month.
12 The fees received by the Secretary of State pursuant to this
13 subsection shall be deposited by the Secretary of State in the
14 general administrative fees account established by section two,
15 article one, chapter fifty-nine of this code.

16 ~~(k)~~ (g) The Secretary of State ~~is authorized to~~ may collect
17 the service fee per transaction, if any, charged for an online
18 service from any customer who purchases data or conducts
19 transactions through an online service.

20 ~~(l)~~ (h) *Rules.* -- The Secretary of State may propose
21 legislative rules for ~~promulgation~~ legislative approval pursuant to
22 article three, chapter twenty-nine-a of this code to implement this
23 article, and may, pending ~~promulgation~~ approval of those rules,
24 promulgate emergency rules pursuant to ~~those provisions for those~~
25 ~~purposes.~~ section fifteen, article three, chapter twenty-nine-a of
26 this code.

NOTE: The purpose of this bill is to eliminate the annual report late fee for domestic corporations, foreign corporations, domestic limited liability companies, and foreign limited liability companies.

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