

# H. B. 2839

---

(BY DELEGATE(S) MORGAN, WALTERS,  
ARVON, ZATEZALO, BORDER AND HOWELL)

---

[Introduced February 20, 2015; referred to the  
Committee on Government Organization.]

---

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.**

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

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

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

18 article ten, chapter thirty-one-b of this code except for the  
19 activity of conducting affairs in interstate commerce when  
20 activity occurs in this state.

21 (3) “Corporation” means a “domestic corporation”, a  
22 “foreign corporation” or a “nonprofit corporation”.

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

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

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

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

35 (8) “Foreign limited liability company” means a limited  
36 liability company organized under a law other than the laws of  
37 this state.

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

40       (10) “Nonprofit corporation” means a nonprofit corporation  
41 as defined by section one hundred fifty, article one, chapter  
42 thirty-one-e of this code.

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

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

56       (c) *Annual report fee.* — After June 30, 2008, each corpora-  
57 tion, limited partnership, domestic limited liability company and

58 foreign limited liability company engaged in or authorized to do  
59 business in this state shall pay an annual report fee of \$25 for the  
60 services of the Secretary of State as attorney-in-fact for the  
61 corporation, limited partnership, domestic limited liability  
62 company or foreign limited liability company, and for such other  
63 administrative services as may be imposed by law upon the  
64 Secretary of State. The fee is due and payable each year after the  
65 initial registration of the corporation, limited partnership,  
66 domestic limited liability company or foreign limited liability  
67 company with the annual report described in subsection (d) of  
68 this section on or before the dates specified in subsection (e) of  
69 this section. The fee is due and payable each year with the  
70 annual report from corporations, limited partnerships, domestic  
71 limited liability companies and foreign limited liability compa-  
72 nies that paid the registration fee prior to July 1, 2008, on or  
73 before the dates specified in subsection (e) of this section. The  
74 annual report fees received by the Secretary of State pursuant to  
75 this subsection shall be deposited by the Secretary of State in the  
76 general administrative fees account established by section two of  
77 this article.

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

91       (2) (A) The annual report shall be filed with the Secretary of  
92       State on forms provided by the Secretary of State for that  
93       purpose. The annual report shall, in the case of corporations,  
94       contain: (i) The address of the corporation's principal office; (ii)  
95       the names and mailing addresses of its officers and directors;  
96       (iii) the name and mailing address of the person on whom notice  
97       of process may be served; (iv) the name and address of the

98 corporation's parent corporation and of each subsidiary of the  
99 corporation licensed to do business in this state; (v) in the case  
100 of limited partnerships domestic limited liability companies and  
101 foreign limited liability companies, similar information with  
102 respect to their principal or controlling interests as determined  
103 by the Secretary of State or otherwise required by law to be  
104 reported to the Secretary of State; (vi) the county or county code  
105 in which the principal office address or mailing address of the  
106 company is located; (vii) business class code; and (viii) any  
107 other information the Secretary of State considers appropriate.

108 (B) Notwithstanding any other provision of law to the  
109 contrary, the Secretary of State shall, upon request of any person,  
110 disclose, with respect to corporations: ~~(i) The address of the~~  
111 ~~corporation's principal office; (ii) the names and addresses of its~~  
112 ~~officers and directors; (iii) the name and mailing address of the~~  
113 ~~person on whom notice of process may be served; (iv) the name~~  
114 ~~and address of each subsidiary of the corporation and the~~  
115 ~~corporation's parent corporation; (v) the county or county code~~  
116 ~~in which the principal office address or mailing address of the~~  
117 ~~company is located; and (vi) the business class code. The~~

118 ~~Secretary of State shall provide similar information with respect~~  
119 ~~to information in its possession relating to limited partnerships~~  
120 ~~domestic limited liability companies and foreign limited liability~~  
121 ~~companies, similar information with respect to their principal or~~  
122 ~~controlling interests. the information required by subparagraph~~  
123 ~~(i) through (vii), paragraph (A), subdivision (2) of this subsec-~~  
124 ~~tion.~~

125       (e) *Annual reports and fees due July 1.* — Each domestic  
126 and foreign corporation, limited partnership, limited liability  
127 company and foreign limited liability company shall file with the  
128 Secretary of State the annual report and pay the annual report fee  
129 by July 1 of each year.

130       (f) *Deposit of fees.* — The annual report fees received by the  
131 Secretary of State pursuant to this section shall be deposited by  
132 the Secretary of State in the general administrative fees account  
133 established by section two, ~~article one, chapter fifty-nine~~ of this  
134 ~~code~~ article.

135       (g) (1) *Duty to pay.* — It shall be the duty of each corpora-  
136 tion, limited partnership, limited liability company and foreign  
137 limited liability company required to pay the annual report fees



138 imposed under this article, to remit them with a properly  
139 completed annual report to the Secretary of State, ~~and if it fails~~  
140 ~~to do so it shall be subject to the late fees prescribed in subsec-~~  
141 ~~tion (h) of this article and dissolution or revocation, pursuant to~~  
142 ~~this code:~~ *Provided*, That before dissolution or revocation for  
143 failure to pay fees may occur, the Secretary of State shall notify  
144 the entity by certified mail, return receipt requested, of its failure  
145 to pay, all ~~late~~ fees or bad check fees associated with the failure  
146 to pay and the date upon which dissolution or revocation will  
147 occur if all fees are not paid in full. The certified mail required  
148 by this subdivision shall be postmarked at least thirty days  
149 before the dissolution or revocation date listed in the notice.

150       (2) *Bad check fee.* — If any corporation, limited partnership,  
151 limited liability company or foreign limited liability company  
152 submits payment by check or money order for the annual report  
153 fee imposed under this article and the check or money order is  
154 rejected because there are insufficient funds in the account or the  
155 account is closed, the Secretary of State shall assess a bad check  
156 fee to the corporation, limited partnership, limited liability  
157 company or foreign limited liability company that is equivalent

158 to the service charge paid by the Secretary of State due to the  
159 rejected check or money order. The bad check fee assessed under  
160 this subdivision shall be deposited into the account or accounts  
161 from which the Secretary of State paid the service charge.

162 ~~(h) *Late fees.* — (1) The following late fees shall be in~~  
163 ~~addition to any other penalties and remedies available elsewhere~~  
164 ~~in this code:~~

165 ~~(A) *Administrative late fee.* — The Secretary of State shall~~  
166 ~~assess upon each corporation, limited partnership, limited~~  
167 ~~liability company and foreign limited liability company delin-~~  
168 ~~quent in the payment of an annual report fee or the filing of an~~  
169 ~~annual report an administrative late fee in the amount of \$50.~~

170 ~~(B) *Administrative late fees for nonprofit corporations.* —~~  
171 ~~The Secretary of State shall assess each nonprofit corporation~~  
172 ~~delinquent in the payment of an annual report fee or the filing of~~  
173 ~~an annual report an administrative late fee in the amount of \$25.~~

174 ~~(2) The Secretary of State shall deposit the first \$25,000 of~~  
175 ~~fees collected under this subsection into the general administra-~~  
176 ~~tive fees account established in subsection (h), section two of~~  
177 ~~this article, and shall deposit any additional fees collected under~~  
178 ~~this section into the General Revenue Fund of the state.~~

179       (†) (h) *Reports to Tax Commissioner; suspension, cancella-*  
180 *tion or withholding of business registration certificate. —*

181       (1) The Secretary of State shall, within twenty days after the  
182 close of each month, make a report to the Tax Commissioner for  
183 the preceding month, in which he or she shall set out the name  
184 of every business entity to which he or she issued a certificate to  
185 conduct business in the State of West Virginia during that  
186 month. The report shall set out the names and addresses all  
187 corporations, limited partnerships, limited liability companies  
188 and foreign limited liability companies to which he or she issued  
189 certificates of change of name or of change of location of  
190 principal office, dissolution, withdrawal or merger. If the  
191 Secretary of State fails to make the report, it shall be the duty of  
192 the Tax Commissioner to report such failure to the Governor. A  
193 writ of mandamus shall lie for correction of such failure.

194       (2) Notwithstanding any other provisions of this code to the  
195 contrary, upon receipt of notice from the Secretary of State that  
196 a corporation, limited partnership, limited liability company and  
197 foreign limited liability company is more than thirty days  
198 delinquent in the payment of annual report fees or in the filing of

199 an annual report required by this section, the Tax Commissioner  
200 may suspend, cancel or withhold a business registration certifi-  
201 cate issued to or applied for by the delinquent corporation,  
202 limited partnership, limited liability company or foreign limited  
203 liability company until the same is paid and filed in the manner  
204 provided for the suspension, cancellation or withholding of  
205 business registration certificates for other reasons under article  
206 twelve, chapter eleven of this code.

207       (†) (i) *Purchase of data.* — The Secretary of State will  
208 provide electronically, for purchase, any data maintained in the  
209 Secretary of State’s Business Organizations Database. For the  
210 electronic purchase of the entire Business Organizations  
211 Database, the cost is \$12,000. For the purchase of the monthly  
212 updates of the Business Organizations Database, the cost is  
213 \$1,000 per month. The fees received by the Secretary of State  
214 pursuant to this subsection shall be deposited by the Secretary of  
215 State in the general administrative fees account established by  
216 section two ~~article one, chapter fifty-nine~~ of this code article.

217       (†) (j) The Secretary of State ~~is authorized to~~ may collect the  
218 service fee per transaction, if any, charged for an online service

219 from any customer who purchases data or conducts transactions  
220 through an online service.

221       ~~(k)~~ (k) *Rules.* — The Secretary of State may propose legisla-  
222 tive rules for ~~promulgation~~ legislative approval pursuant to  
223 article three, chapter twenty-nine-a of this code to implement  
224 this article, and may, pending ~~promulgation~~ approval of those  
225 rules, promulgate emergency rules pursuant to ~~those provisions~~  
226 ~~for those purposes.~~ section fifteen, article three, chapter twenty-  
227 nine-a of 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.





