

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2682

2015 Carryover

(BY DELEGATES HAMILTON, LONGSTRETH, FERRO AND
GUTHRIE)

[By Request of the Secretary of State]

[Introduced January 13, 2016; referred to the
Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §59-1-2 of the Code of West Virginia, 1931, as amended, relating
2 to donations of overpayment of fees to the Secretary of State.

Be it enacted by the Legislature of West Virginia:

1 That §59-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted
2 to read as follows:

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 Secretary of State shall charge
2 for services rendered in his or her office the following fees to be paid by the person to whom the
3 service is rendered at the time it is done:

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

- 8 (A) Articles of incorporation of for-profit corporation..... \$50.00
- 9 (B) Articles of incorporation of nonprofit corporation25.00
- 10 (C) Articles of organization of limited liability company 100.00
- 11 (D) Agreement of a general partnership.....50.00
- 12 (E) Certificate of a limited partnership..... 100.00
- 13 (F) Agreement of a voluntary association50.00
- 14 (G) Articles of organization of a business trust.....50.00
- 15 (H) Amendment or correction of articles of incorporation, including change of name or
16 increase of capital stock, in addition to any applicable license tax.....25.00
- 17 (I) Amendment or correction, including change of name, of articles of organization of

18 business trust, limited liability partnership, limited liability company or professional limited liability
19 company or of certificate of limited partnership or agreement of voluntary association.....25.00

20 (J) Amendment and restatement of articles of incorporation, certificate of limited
21 partnership, agreement of voluntary association or articles of organization of limited liability
22 partnership, limited liability company or professional limited liability company or business
23 trust.....25.00

24 (K) Registration of trade name, otherwise designated as a true name, fictitious name or
25 D.B.A. (doing business as) name for any domestic business entity as permitted by law25.00

26 (L) Articles of merger of two corporations, limited partnerships, limited liability
27 partnerships, limited liability companies or professional limited liability companies, voluntary
28 associations or business trusts25.00

29 (M) Plus for each additional party to the merger in excess of two15.00

30 (N) Statement of conversion, when permitted, from one business entity into another
31 business entity, in addition to the cost of filing the appropriate documents to organize the surviving
32 entity.....25.00

33 (O) Articles of dissolution of a corporation, voluntary association or business trust, or
34 statement of dissolution of a general partnership25.00

35 (P) Revocation of voluntary dissolution of a corporation, voluntary association or business
36 trust.....15.00

37 (Q) Articles of termination of a limited liability company, cancellation of a limited
38 partnership or statement of withdrawal of limited liability partnership25.00

39 (R) Reinstatement of a limited liability company or professional limited liability company
40 after administrative dissolution25.00

41 (2) For filing, recording, indexing, preserving a record of and issuing a certificate relating

42 to the registration, amendment, change of name, merger, consolidation, conversion, renewal,
43 withdrawal or termination within this state of business entities organized in other states or
44 countries, as follows:

- 45 (A) Certificate of authority of for-profit corporation\$100.00
- 46 (B) Certificate of authority of nonprofit corporation50.00
- 47 (C) Certificate of authority of foreign limited liability companies 150.00
- 48 (D) Certificate of exemption from certificate of authority25.00
- 49 (E) Registration of a general partnership50.00
- 50 (F) Registration of a limited partnership 150.00
- 51 (G) Registration of a limited liability partnership for two-year term500.00
- 52 (H) Registration of a voluntary association 50.00
- 53 (I) Registration of a trust or business trust50.00
- 54 (J) Amendment or correction of certificate of authority of a foreign corporation, including
55 change of name or increase of capital stock, in addition to any applicable license tax25.00
- 56 (K) Amendment or correction of certificate of limited partnership, limited liability
57 partnership, limited liability company or professional limited liability company, voluntary
58 association or business trust25.00
- 59 (L) Registration of trade name, otherwise designated as a true name, fictitious name or
60 D.B.A. (doing business as) name for any foreign business entity as permitted by law25.00
- 61 (M) Amendment and restatement of certificate of authority or of registration of a
62 corporation, limited partnership, limited liability partnership, limited liability company or
63 professional limited liability company, voluntary association or business trust25.00
- 64 (N) Articles of merger of two corporations, limited partnerships, limited liability
65 partnerships, limited liability companies or professional limited liability companies, voluntary

66 associations or business trusts25.00

67 (O) Plus for each additional party to the merger in excess

68 of two5.00

69 (P) Statement of conversion, when permitted, from one business entity into another

70 business entity, in addition to the cost of filing the appropriate articles or certificate to organize

71 the surviving entity25.00

72 (Q) Certificate of withdrawal or cancellation of a corporation, limited partnership, limited

73 liability partnership, limited liability company, voluntary association or business trust.....25.00

74 Notwithstanding any other provision of this section to the contrary, after June 30, 2008,

75 the fees described in this subdivision that are collected for the issuance of a certificate relating to

76 the initial registration of a corporation, limited partnership, domestic limited liability company or

77 foreign limited liability company shall be deposited in the general administrative fees account

78 established by this section.

79 (3) For receiving, filing and recording a change of the principal or designated office,

80 change of the agent of process and/or change of officers, directors, partners, members or

81 managers, as the case may be, of a corporation, limited partnership, limited liability partnership,

82 limited liability company or other business entity as provided by law\$15.00

83 (4) For receiving, filing and preserving a reservation of a name for each one hundred

84 twenty days or for any other period in excess of seven days prescribed by law for a corporation,

85 limited partnership, limited liability partnership or limited liability company\$15.00

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

87 (A) Certificate of good standing of a domestic or foreign corporation\$10.00

88 (B) Certificate of existence of a domestic limited liability company, and certificate of

89 authorization foreign limited liability company10.00

90 (C) Certificate of existence of any business entity, trademark or service mark registered
91 with the Secretary of State10.00

92 (D) Certified copy of corporate charter or comparable organizing documents for other
93 business entities15.00

94 (E) Plus, for each additional amendment, restatement or other additional document..5.00

95 (F) Certificate of registration of the name of a foreign corporation, limited liability company,
96 limited partnership or limited liability partnership25.00

97 (G) And for the annual renewal of the name registration10.00

98 (H) Any other certificate not specified in this subdivision10.00

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

101 (A) Certificate or apostille relating to the authority of certain public officers, including the
102 membership of boards and commissions\$10.00

103 (B) Plus, for each additional certificate pertaining to the same transaction5.00

104 (C) Any other certificate not specified in this subdivision10.00

105 (D) For acceptance, indexing and recordation of service of process any corporation,
106 limited partnership, limited liability partnership, limited liability company, voluntary association,
107 business trust, insurance company, person or other entity as permitted by law15.00

108 (E) For shipping and handling expenses for execution of service of process by certified
109 mail upon any defendant within the United States, which fee is to be deposited to the special
110 revenue account established in this section for the operation of the office of the Secretary of State.
1115.00

112 (F) For shipping and handling expenses for execution of service of process upon any
113 defendant outside the United States by registered mail, which fee is to be deposited to the special

114 revenue account established in this section for the operation of the office of the Secretary of State.
11515.00

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

118 (A) For any search of archival records maintained at sites other than the office of the
119 Secretary of State no less than \$10.00

120 (B) For searches of archival records maintained at sites other than the office of the
121 Secretary of State which require more than one hour, for each hour or fraction of an hour
122 consumed in making a search..... 10.00

123 (C) For any search of records maintained on site for the purpose of obtaining copies of
124 documents or printouts of data..... 5.00

125 (D) For any search of records maintained in electronic format which requires special
126 programming to be performed by the state information services agency or other vendor any actual
127 cost, but not less than25.00

128 (E) The cost of the search is in addition to the cost of any copies or printouts prepared or
129 any certificate issued pursuant to or based on the search.

130 (F) For recording any paper for which no specific fee is prescribed5.00

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

133 (A) For a copy of any paper or printout of electronic data, if one sheet \$1.00

134 (B) For each sheet after the first50

135 (C) For sending the copies or lists by fax transmission5.00

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

138 established by the Secretary of State at a rate approximating 2.00 plus .10 per page and rounded
139 to the nearest dollar.

140 (E) For electronic copies of records obtained in data format on disk, the cost of the record
141 in the least expensive available printed format, plus, for each required disk, which shall be
142 provided by the Secretary of State5.00

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

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

148 (d) The records maintained by the Secretary of State are prepared and indexed at the
149 expense of the state and those records shall not be obtained for commercial resale without the
150 written agreement of the state to a contract including reimbursement to the state for each instance
151 of resale.

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

155 (f) There is hereby continued in the State Treasury a special revenue account to be known
156 as the "service fees and collections" account. Expenditures from the account shall be used for the
157 operation of the office of the Secretary of State and are not authorized from collections, but are
158 to be made only in accordance with appropriation by the Legislature and in accordance with the
159 provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions
160 set forth in article two, chapter five-a of this code. Notwithstanding any other provision of this code
161 to the contrary, except as provided in subsection (h) of this section and section two-a of this article,

162 one half of all the fees and service charges established in the following sections and for the
163 following purposes shall be deposited by the Secretary of State or other collecting agency to that
164 special revenue account and used for the operation of the office of the Secretary of State:

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

167 (2) The fees received for the sale of the State Register, code of state rules and other
168 copies established by rule and authorized by section seven, article two, chapter twenty-nine-a of
169 this code;

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

173 (4) The annual attorney-in-fact fee for limited liability companies as designated in section
174 one hundred eight, article one, chapter thirty-one-b of this code and established in section two
175 hundred eleven, article two of said chapter: *Provided*, That after June 30, 2008, the annual report
176 fees designated in section one hundred eight, article one, chapter thirty-one-b of this code shall
177 upon collection be deposited in the general administrative fees account described in subsection
178 (h) of this section;

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

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

183 (7) The fees for the application and record maintenance of all notaries public established
184 by section twenty, article four, chapter thirty-nine of this code.

185 (8) The fees for registering credit service organizations as established by section five,

186 article six-c, chapter forty-six-a of this code;

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

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

191 (11) All fees for services, the sale of photocopies and data maintained at the expense of
192 the Secretary of State as provided in this section; and

193 (12) All registration, license and other fees collected by the Secretary of State not specified
194 in this section.

195 (g) Any balance in the service fees and collections account established by this section
196 which exceeds five hundred thousand dollars as of June 30, 2003, and each year thereafter, shall
197 be expired to the state fund, General Revenue Fund.

198 (h)(1) Effective July 1, 2008, there is hereby created in the State Treasury a special
199 revenue account to be known as the general administrative fees account. Expenditures from the
200 account shall be used for the operation of the office of the Secretary of State and are not
201 authorized from collections, but are to be made only in accordance with appropriation by the
202 Legislature and in accordance with the provisions of article three, chapter twelve of this code and
203 upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code:
204 *Provided*, That for the fiscal year ending June 30, 2009, expenditures are authorized from
205 collections rather than pursuant to an appropriation by the Legislature. Any balance in the account
206 at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in
207 the fund and be expended as provided by this subsection.

208 (2) After June 30, 2008, all the fees and service charges established in section two-a of
209 this article for the following purposes shall be collected and deposited by the Secretary of State

210 or other collecting agency in the general administrative fees account and used for the operation
211 of the office of the Secretary of State:

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

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

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

219 (i) There is continued in the office of the Secretary of State a noninterest-bearing, escrow
220 account to be known as the "prepaid fees and services account". This account shall be for the
221 purpose of allowing customers of the Secretary of State to prepay for services, with payment to
222 be held in escrow until services are rendered. Payments deposited in the account shall remain in
223 the account until services are rendered by the Secretary of State and at that time the fees will be
224 reallocated to the appropriate general or special revenue accounts. There shall be no fee charged
225 by the Secretary of State to the customer for the use of this account and the customer may request
226 the return of any moneys maintained in the account at any time without penalty. The assets of the
227 prepaid fees and services account do not constitute public funds of the state and are available
228 solely for carrying out the purposes of this section.

229 (j) The Secretary of State shall provide a mechanism by which any overpayment of \$25 or
230 less of any fee authorized by this or any other chapter of this code to the Secretary of State may
231 be deposited in the West Virginia Children's Trust Fund authorised by section one, article six-c,
232 chapter forty-nine of this code: *Provided*, That any person due a refund of \$25 or less for
233 overpayment of fees must voluntarily and affirmatively option for such refund to be deposited in

234 the West Virginia Children's Trust Fund.

NOTE: The purpose of this bill is to allow persons due a refund of \$25 or less to donate the refund amount to the West Virginia Children's Trust Fund rather than receiving the refund.

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