

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### Senate Bill 25

FISCAL  
NOTE

By Senator Smith

[Introduced January 11, 2023; referred  
to the Committee on Government Organization; and  
then to the Committee on Finance]

1 A BILL to amend and reenact §59-1-2a of the Code of West Virginia, 1931, as amended, relating to  
 2 requiring disclaimers on third party, nongovernment solicitations of services for filing  
 3 business annual reports with the Secretary of State; and creating criminal and civil  
 4 penalties.

*Be it enacted by the Legislature of West Virginia:*

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

7 (2) "Business activity" means all activities engaged in or caused to be engaged in with the  
 8 object of gain or economic benefit, direct or indirect, but does not mean any of the activities of  
 9 foreign corporations enumerated in §31D-15-1501(b) of this code, except for the activity of  
 10 conducting affairs in interstate commerce when activity occurs in this state, nor does it mean any  
 11 of the activities of foreign limited liability companies enumerated in §31B-10-1003(a) of this code,  
 12 except for the activity of conducting affairs in interstate commerce when activity occurs in this  
 13 state.

14 (3) "Corporation" means a "domestic corporation", a "foreign corporation", or a "nonprofit  
 15 corporation".

16 (4) "Deliver or delivery" means any method of delivery used in conventional commercial  
 17 practice, including, but not limited to, delivery by hand, mail, commercial delivery, and electronic  
 18 transmission.

19 (5) "Domestic corporation" means a corporation for profit, which is not a foreign  
20 corporation, incorporated under or subject to chapter 31D of this code.

21 (6) "Domestic limited liability company" means a limited liability company, which is not a  
22 foreign limited liability company, under or subject to chapter 31B of this code.

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

25 (8) "Foreign limited liability company" means a limited liability company organized under a  
26 law other than the laws of this state.

27 (9) "Limited partnership" means a partnership as defined by §47-9-1 of this code.

28 (10) "Nonprofit corporation" means a nonprofit corporation as defined by §31E-1-150 of  
29 this code.

30 (11) "Registration fee" means the fee for the issuance of a certificate relating to the initial  
31 registration of a corporation, limited partnership, domestic limited liability company, or foreign  
32 limited liability company described in §59-1-2(a)(2) of this code. The term "initial registration" also  
33 means the date upon which the registration fee is paid.

34 (12) "Veteran" means any person who has served as an active member of the armed  
35 forces of the United States, the National Guard, or a reserve component as described in 38 U. S.  
36 C. §101. Notwithstanding any provision in this code to the contrary, a veteran must be honorably  
37 discharged or under honorable conditions as described in 38 U. S. C. §101.

38 (13) "Veteran-owned business" or "active-duty member-owned business" mean a  
39 business that meets the following criteria:

40 (A) Is at least 51 percent unconditionally owned by one or more veterans, active-duty  
41 members of any branch of the United States military, or their respective spouses; or

42 (B) In the case of a publicly owned business, at least 51 percent of the stock is  
43 unconditionally owned by one or more veterans, active-duty members of any branch of the United  
44 States military, or their respective spouses.

45 (b) Required payment of annual report fee and filing of annual report. — After June 30,  
46 2008, no corporation, limited partnership, domestic limited liability company, or foreign limited  
47 liability company may engage in any business activity in this state without paying the annual report  
48 fee and filing the annual report as required by this section.

49 (c) *Annual report fee.* — After June 30, 2008, each corporation, limited partnership,  
50 domestic limited liability company, and foreign limited liability company engaged in or authorized to  
51 do business in this state shall pay an annual report fee of \$25 for the services of the Secretary of  
52 State as attorney-in-fact for the corporation, limited partnership, domestic limited liability company,  
53 or foreign limited liability company and for such other administrative services as may be imposed  
54 by law upon the Secretary of State. The fee is due and payable each year after the initial  
55 registration of the corporation, limited partnership, domestic limited liability company, or foreign  
56 limited liability company with the annual report described in subsection (d) of this section on or  
57 before the dates specified in subsection (e) of this section. The fee is due and payable each year  
58 with the annual report from corporations, limited partnerships, domestic limited liability companies,  
59 and foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or  
60 before the dates specified in subsection (e) of this section. The annual report fees received by the  
61 Secretary of State pursuant to this subsection shall be deposited by the Secretary of State in the  
62 General Administrative Fees Account established by §59-1-2 of this code.

63 (d) *Annual report.* —

64 (1) After June 30, 2008, each corporation, limited partnership, domestic limited liability  
65 company, and foreign limited liability company engaged in or authorized to do business in this  
66 state shall file an annual report. The report is due each year after the initial registration of the  
67 corporation, limited partnership, domestic limited liability company, or foreign limited liability  
68 company with the annual report fee described in subsection (c) of this section on or before the  
69 dates specified in subsection (e) of this section. The report is due each year from corporations,  
70 limited partnerships, domestic limited liability companies, and foreign limited liability companies

71 that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection (e)  
72 of this section.

73 (2)(A) The annual report shall be filed with the Secretary of State on forms provided by the  
74 Secretary of State for that purpose. The annual report shall, in the case of corporations, contain: (i)  
75 The address of the corporation's principal office; (ii) the names and mailing addresses of its  
76 officers and directors; (iii) the name and mailing address of the person on whom notice of process  
77 may be served; (iv) the name and address of the corporation's parent corporation and of each  
78 subsidiary of the corporation licensed to do business in this state; (v) in the case of limited  
79 partnerships, domestic limited liability companies, and foreign limited liability companies, similar  
80 information with respect to their principal or controlling interests as determined by the Secretary of  
81 State or otherwise required by law to be reported to the Secretary of State; (vi) the county or  
82 county code in which the principal office address or mailing address of the company is located; (vii)  
83 business class code; and (viii) any other information the Secretary of State considers appropriate.

84 (B) Notwithstanding any other provision of law to the contrary, the Secretary of State shall,  
85 upon request of any person, disclose, with respect to corporations: (i) The address of the  
86 corporation's principal office; (ii) the names and addresses of its officers and directors; (iii) the  
87 name and mailing address of the person on whom notice of process may be served; (iv) the name  
88 and address of each subsidiary of the corporation and the corporation's parent corporation; (v) the  
89 county or county code in which the principal office address or mailing address of the company is  
90 located; and (vi) the business class code. The Secretary of State shall provide similar information  
91 with respect to information in its possession relating to limited partnerships, domestic limited  
92 liability companies, and foreign limited liability companies, similar information with respect to their  
93 principal or controlling interests.

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

97           (f) *Deposit of fees.* — The annual report fees received by the Secretary of State pursuant to  
98 this section shall be deposited by the Secretary of State in the general administrative fees account  
99 established by §59-1-2 of this code.

100           (g)(1) *Duty to pay.* — It shall be the duty of each corporation, limited partnership, limited  
101 liability company, and foreign limited liability company required to pay the annual report fees  
102 imposed under this article to remit them with a properly completed annual report to the Secretary  
103 of State, and if it fails to do so, it shall be subject to the late fees prescribed in subsection (h) of this  
104 section and dissolution or revocation pursuant to this code: *Provided*, That before dissolution or  
105 revocation for failure to pay fees may occur, the Secretary of State shall notify the entity by certified  
106 mail, return receipt requested, of its failure to pay, all late fees or bad check fees associated with  
107 the failure to pay, and the date upon which dissolution or revocation will occur if all fees are not  
108 paid in full. The certified mail required by this subdivision shall be postmarked at least 30 days  
109 before the dissolution or revocation date listed in the notice.

110           (2) *Bad check fee.* — If any corporation, limited partnership, limited liability company, or  
111 foreign limited liability company submits payment by check or money order for the annual report  
112 fee imposed under this article and the check or money order is rejected because there are  
113 insufficient funds in the account or the account is closed, the Secretary of State shall assess a bad  
114 check fee to the corporation, limited partnership, limited liability company, or foreign limited liability  
115 company that is equivalent to the service charge paid by the Secretary of State due to the rejected  
116 check or money order. The bad check fee assessed under this subdivision shall be deposited into  
117 the account or accounts from which the Secretary of State paid the service charge.

118           (h) *Late fees.* —

119           (1) The following late fees shall be in addition to any other penalties and remedies  
120 available elsewhere in this code:

121           (A) *Administrative late fee.* — The Secretary of State shall assess upon each corporation,  
122 limited partnership, limited liability company, and foreign limited liability company delinquent in the

123 payment of an annual report fee or the filing of an annual report an administrative late fee in the  
124 amount of \$50.

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

128 (2) The Secretary of State shall deposit the first \$25,000 of fees collected under this  
129 subsection into the General Administrative Fees Account established in §59-1-2(h) of this code  
130 and shall deposit any additional fees collected under this section into the General Revenue Fund  
131 of the state.

132 (i) *Reports to Tax Commissioner; suspension, cancellation or withholding of business*  
133 *registration certificate.* —

134 (1) The Secretary of State shall, within 20 days after the close of each month, make a  
135 report to the Tax Commissioner for the preceding month, in which he or she shall set out the name  
136 of every business entity to which he or she issued a certificate to conduct business in the State of  
137 West Virginia during that month. The report shall set out the names and addresses of all  
138 corporations, limited partnerships, limited liability companies, and foreign limited liability  
139 companies to which he or she issued certificates of change of name or of change of location of  
140 principal office, dissolution, withdrawal, or merger. If the Secretary of State fails to make the report,  
141 it shall be the duty of the Tax Commissioner to report such failure to the Governor. A writ of  
142 mandamus shall lie for correction of such failure.

143 (2) Notwithstanding any other provisions of this code to the contrary, upon receipt of notice  
144 from the Secretary of State that a corporation, limited partnership, limited liability company, and  
145 foreign limited liability company is more than 30 days delinquent in the payment of annual report  
146 fees or in the filing of an annual report required by this section, the Tax Commissioner may  
147 suspend, cancel, or withhold a business registration certificate issued to or applied for by the  
148 delinquent corporation, limited partnership, limited liability company, or foreign limited liability

149 company until the same is paid and filed in the manner provided for the suspension, cancellation,  
150 or withholding of business registration certificates for other reasons under §11-12-1 *et seq.* of this  
151 code.

152 (j) *Purchase of data.* — The Secretary of State will shall provide electronically, for  
153 purchase, any data maintained in the Secretary of State's Business Organizations Database. For  
154 the electronic purchase of the entire Business Organizations Database, the cost is \$12,000. For  
155 the purchase of the monthly updates of the Business Organizations Database, the cost is \$1,000  
156 per month. The fees received by the Secretary of State pursuant to this subsection shall be  
157 deposited by the Secretary of State in the General Administrative Fees Account established by  
158 §59-1-2 of this code.

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

162 (l) *Rules.* — The Secretary of State may propose rules for legislative approval, in  
163 accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement this article.

164 (m) A veteran-owned business, as defined in subdivision (a)(13) of this section,  
165 commenced on or after July 1, 2015, or an active-duty member-owned business, as defined in  
166 subdivision (a)(13) of this section, commenced on or after July 1, 2021, is exempt from paying the  
167 annual report fee, required by this section, for the first four years after its initial registration:  
168 *Provided*, That a veteran-owned business or an active-duty member-owned business is not  
169 exempt from any filing deadlines or other fees required by this section.

170 (n) Any person, firm, corporation, or association that is a nongovernmental entity who  
171 solicits the purchase of or payment for a product or service from businesses with which they do not  
172 have a pre-existing commercial relationship for annual report filing under subsection (d) of this  
173 section by means of a mailing, electronic mail, or facsimile, shall include all of the following  
174 requirements on each solicitation:



175 (1) Conspicuously display in the heading of the solicitation a disclosure on the front and  
176 back of each page, the following statement in 16-point bold Helvetica font and in all capital letters:  
177 "THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY  
178 GOVERNMENTAL AGENCY, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF  
179 THE GOVERNMENT";

180 (2) In the case of a mailed solicitation, the envelope or outside cover or wrapper in which  
181 the solicitation is mailed, conspicuously display in 16-point bold Helvetica font and in all capital  
182 letters on the front of the envelope, outside cover, or wrapper, the following disclosure: "THIS IS  
183 NOT A GOVERNMENT DOCUMENT"; and

184 (3) On each fee schedule page, the following disclosure in 12-point bold font: "Annual  
185 Report filings may be filed directly with the Secretary of State for the statutory \$25 fee".

186 (o) Any person who violates subsection (n) of this section is guilty of a misdemeanor and,  
187 upon conviction thereof, shall be fined up to \$1,000 for each noncompliant solicitation, or confined  
188 in jail for a period of up to one year, or both fined and confined.

189 (p) Any person harmed as a result of a violation of subsection (n) of this section shall be  
190 entitled to recover damages in an amount equal to three times the amount solicited, any  
191 associated court costs and attorneys' fees, and any other damages, at the discretion of the court.