

HB 2553

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2553

(By Delegate(s) Morgan, Stephens, Diserio, Jones,
Paxton, M. Smith, Staggers, Hartman and Lynch)



Passed April 9, 2013

In effect ninety days from passage.

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OFFICE OF THE CLERK
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H. B. 2553

(BY DELEGATE(S) MORGAN, STEPHENS, DISERIO, JONES,
PAXTON, M. SMITH, STAGGERS, HARTMAN AND LYNCH)

[Passed April 9, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §31B-8-809 of the Code of West Virginia, 1931, as amended; to amend and reenact §31B-10-1006 of said code; to amend and reenact §31D-14-1420 of said code; to amend and reenact §31D-15-1530 of said code; to amend and reenact §31E-13-1320 of said code; to amend and reenact §31E-14-1430 of said code; and to amend and reenact §59-1-2a of said code, all relating to the authority to conduct business in the state; authorizing the Secretary of State to administratively

dissolve or revoke the certificate of authority of certain business entities; authorizing dissolution or revocation if certain business entities fail to pay fees imposed by law; requiring notice to a business entity by certified mail before dissolution or revocation due to failure to pay fees; permitting a bad check fee if certain payment by check or money order is rejected for certain reasons; authorizing dissolution or revocation if one or more professional licenses have been revoked and the license is or licenses are necessary for the continued operation of the business entity; and authorizing dissolution or revocation if the business entity is in default with the Bureau of Employment Programs.

Be it enacted by the Legislature of West Virginia:

That §31B-8-809 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31B-10-1006 of said code be amended and reenacted; that §31D-14-1420 of said code be amended and reenacted; that §31D-15-1530 of said code be amended and reenacted; that §31E-13-1320 of said code be amended and reenacted; that §31E-14-1430 of said code be amended and reenacted; and that §59-1-2a of said code be amended and reenacted, all to read as follows:

**CHAPTER 31B. UNIFORM LIMITED
LIABILITY COMPANY ACT.**

ARTICLE 8. WINDING UP COMPANY'S BUSINESS.

§31B-8-809. Grounds for administrative dissolution.

1 The Secretary of State may commence a proceeding to
2 administratively dissolve a limited liability company if:

3 (1) The company fails to pay any fees, taxes or penalties
4 imposed by this chapter or other law within sixty days after they
5 are due;

6 (2) The company fails to deliver its annual report to the
7 Secretary of State within sixty days after it is due;

8 (3) The professional license of one or more of the license
9 holders is revoked by a professional licensing board and the
10 license is or all the licenses are required for the continued
11 operation of the company; or

12 (4) The company is in default with the Bureau of Employ-
13 ment Programs as provided in section six, article two, chapter
14 twenty-one-a of this code.

ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

**§31B-10-1006. Revocation and reinstatement of certificate of
authority.**

1 (a) A certificate of authority of a foreign limited liability
2 company to transact business in this state may be revoked by the
3 Secretary of State in the manner provided in subsection (b) of
4 this section if:

5 (1) The company fails to:

6 (i) Pay any fees, taxes and penalties owed to this state;

7 (ii) Deliver its annual report required under section 2-211 to
8 the Secretary of State within sixty days after it is due; or

9 (iii) File a statement of a change in the name or business
10 address of the agent as required by this article;

11 (2) A misrepresentation has been made of any material
12 matter in any application, report, affidavit or other record
13 submitted by the company pursuant to this article;

14 (3) The professional license of one or more of the license
15 holders is revoked by a professional licensing board and the
16 license is or all the licenses are required for the continued
17 operation of the company; or

18 (4) The company is in default with the Bureau of Employ-
19 ment Programs as provided in section six, article two, chapter
20 twenty-one-a of this code.

21 (b) The Secretary of State may not revoke a certificate of
22 authority of a foreign limited liability company unless the
23 Secretary of State sends the company notice of the revocation,
24 at least sixty days before its effective date, by a record addressed
25 to its principal office. The notice must specify the cause for the
26 revocation of the certificate of authority. The authority of the
27 company to transact business in this state ceases on the effective
28 date of the revocation unless the foreign limited liability
29 company cures the failure before that date.

30 (c) A foreign limited liability company administratively
31 revoked may apply to the Secretary of State for reinstatement
32 within two years after the effective date of revocation. The
33 application must:

34 (1) Recite the name of the company and the effective date of
35 its administrative revocation; (2) state that the ground for
36 revocation either did not exist or has been eliminated; (3) state
37 that the company's name satisfies the requirements of section
38 10-1005; and (4) contain a certificate from the Tax Commis-
39 sioner reciting that all taxes owed by the company have been
40 paid.

41 (d) If the Secretary of State determines that the application
42 contains the information required by subsection (a) of this
43 section and that the information is correct, the Secretary of State
44 shall cancel the certificate of revocation and prepare a certificate
45 of reinstatement that recites this determination and the effective
46 date of reinstatement, file the original of the certificate and serve
47 the company with a copy of the certificate.

48 (e) When reinstatement is effective, it relates back to and
49 takes effect as of the effective date of the administrative revoca-

50 tion and the company may resume its business as if the adminis-
51 trative revocation had never occurred.

**CHAPTER 31D. WEST VIRGINIA
BUSINESS CORPORATION ACT.**

ARTICLE 14. DISSOLUTION.

PART II. ADMINISTRATIVE DISSOLUTION.

§31D-14-1420. Grounds for administrative dissolution.

1 The Secretary of State may commence a proceeding under
2 section one thousand four hundred twenty-one of this article to
3 administratively dissolve a corporation if:

4 (1) The corporation does not pay within sixty days after they
5 are due any fees, franchise taxes or penalties imposed by this
6 chapter or other law;

7 (2) The corporation does not notify the Secretary of State
8 within sixty days that its registered agent or registered office has
9 been changed, that its registered agent has resigned or that its
10 registered office has been discontinued;

11 (3) The corporation's period of duration stated in its articles
12 of incorporation expires;

13 (4) The professional license of one or more of the license
14 holders is revoked by a professional licensing board and the
15 license is or all the licenses are required for the continued
16 operation of the corporation; or

17 (5) The corporation is in default with the Bureau of Employ-
18 ment Programs as provided in section six, article two, chapter
19 twenty-one-a of this code.

ARTICLE 15. FOREIGN CORPORATIONS.

PART III. REVOCATION OF CERTIFICATE OF AUTHORITY.

§31D-15-1530. Grounds for revocation.

1 The Secretary of State may commence a proceeding under
2 section one thousand five hundred thirty-one of this article to
3 revoke the certificate of authority of a foreign corporation
4 authorized to transact business in this state if:

5 (1) The foreign corporation does not pay within sixty days
6 after they are due any fees, franchise taxes or penalties imposed
7 by this chapter or other law;

8 (2) The foreign corporation does not inform the Secretary of
9 State under section one thousand five hundred eight or one
10 thousand five hundred nine of this article that its registered agent
11 or registered office has changed, that its registered agent has
12 resigned or that its registered office has been discontinued within
13 sixty days of the change, resignation or discontinuance;

14 (3) An incorporator, director, officer or agent of the foreign
15 corporation signed a document he or she knew was false in any
16 material respect with intent that the document be delivered to the
17 Secretary of State for filing;

18 (4) The Secretary of State receives a duly authenticated
19 certificate from the Secretary of State or other official having
20 custody of corporate records in the state or country under whose
21 law the foreign corporation is incorporated stating that it has
22 been dissolved or disappeared as the result of a merger;

23 (5) The professional license of one or more of the license
24 holders is revoked by a professional licensing board and the
25 license is or all the licenses are required for the continued
26 operation of the foreign corporation; or

27 (6) The foreign corporation is in default with the Bureau of
28 Employment Programs as provided in section six, article two,
29 chapter twenty-one-a of this code.

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

ARTICLE 13. DISSOLUTION.

PART II. ADMINISTRATIVE DISSOLUTION.

§31E-13-1320. Grounds for administrative dissolution.

1 The Secretary of State may commence a proceeding under
2 section one thousand three hundred twenty-one of this article to
3 administratively dissolve a corporation if:

4 (1) The corporation does not pay within sixty days after they
5 are due any fees, franchise taxes or penalties imposed by this
6 chapter or other law;

7 (2) The corporation does not notify the Secretary of State
8 within sixty days that its registered agent or registered office has
9 been changed, that its registered agent has resigned or that its
10 registered office has been discontinued;

11 (3) The corporation's period of duration stated in its articles
12 of incorporation expires;

13 (4) The professional license of one or more of the license
14 holders is revoked by a professional licensing board and the
15 license is or all the licenses are required for the continued
16 operation of the nonprofit entity; or

17 (5) The corporation is in default with the Bureau of Employ-
18 ment Programs as provided in section six, article two, chapter
19 twenty-one-a of this code.

ARTICLE 14. FOREIGN CORPORATIONS.

PART III. REVOCATION OF CERTIFICATE OF AUTHORITY.

§31E-14-1430. Grounds for revocation.

1 The Secretary of State may commence a proceeding under
2 section one thousand four hundred thirty-one of this article to
3 revoke the certificate of authority of a foreign corporation
4 authorized to conduct activities in this state if:

5 (1) The foreign corporation does not pay within sixty days
6 after they are due any fees, franchise taxes or penalties imposed
7 by this chapter or other law;

8 (2) The foreign corporation does not inform the Secretary of
9 State under sections one thousand four hundred eight or one
10 thousand four hundred nine of this article that its registered agent
11 or registered office has changed, that its registered agent has
12 resigned, or that its registered office has been discontinued
13 within sixty days of the change, resignation or discontinuance;

14 (3) An incorporator, director, officer or agent of the foreign
15 corporation signed a document he or she knew was false in any
16 material respect with intent that the document be delivered to the
17 Secretary of State for filing;

18 (4) The Secretary of State receives a duly authenticated
19 certificate from the Secretary of State or other official having
20 custody of corporate records in the state or country under whose
21 law the foreign corporation is incorporated stating that it has
22 been dissolved or disappeared as the result of a merger;

23 (5) The professional license of one or more of the license
24 holders is revoked by a professional licensing board and the
25 license is or all the licenses are required for the continued
26 operation of the corporation; or

27 (6) The foreign corporation is in default with the Bureau of
28 Employment Programs as provided in section six, article two,
29 chapter twenty-one-a of this code.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

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.

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

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

133 (g) (1) *Duty to pay.* — It shall be the duty of each corpora-
134 tion, limited partnership, limited liability company and foreign
135 limited liability company required to pay the annual report fees
136 imposed under this article, to remit them with a properly
137 completed annual report to the Secretary of State, and if it fails
138 to do so it shall be subject to the late fees prescribed in subsec-
139 tion (h) of this article and dissolution or revocation, pursuant to
140 this code: *Provided*, That before dissolution or revocation for
141 failure to pay fees may occur, the Secretary of State shall notify
142 the entity by certified mail, return receipt requested, of its failure
143 to pay, all late fees or bad check fees associated with the failure
144 to pay and the date upon which dissolution or revocation will
145 occur if all fees are not paid in full. The certified mail required
146 by this subdivision shall be postmarked at least thirty days
147 before the dissolution or revocation date listed in the notice.

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

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

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

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

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

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

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

179 (1) The Secretary of State shall, within twenty days after the
180 close of each month, make a report to the Tax Commissioner for
181 the preceding month, in which he or she shall set out the name
182 of every business entity to which he or she issued a certificate to
183 conduct business in the State of West Virginia during that
184 month. The report shall set out the names and addresses all
185 corporations, limited partnerships, limited liability companies
186 and foreign limited liability companies to which he or she issued
187 certificates of change of name or of change of location of

188 principal office, dissolution, withdrawal or merger. If the
189 Secretary of State fails to make the report, it shall be the duty of
190 the Tax Commissioner to report such failure to the Governor. A
191 writ of mandamus shall lie for correction of such failure.

192 (2) Notwithstanding any other provisions of this code to the
193 contrary, upon receipt of notice from the Secretary of State that
194 a corporation, limited partnership, limited liability company and
195 foreign limited liability company is more than thirty days
196 delinquent in the payment of annual report fees or in the filing of
197 an annual report required by this section, the Tax Commissioner
198 may suspend, cancel or withhold a business registration certifi-
199 cate issued to or applied for by the delinquent corporation,
200 limited partnership, limited liability company or foreign limited
201 liability company until the same is paid and filed in the manner
202 provided for the suspension, cancellation or withholding of
203 business registration certificates for other reasons under article
204 twelve, chapter eleven of this code.

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

215 (k) The Secretary of State is authorized to collect the service
216 fee per transaction, if any, charged for an online service from
217 any customer who purchases data or conducts transactions
218 through an online service.

219 (l) *Rules.* — The Secretary of State may propose legislative
220 rules for promulgation pursuant to article three, chapter twenty-

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221 nine-a of this code to implement this article, and may, pending
222 promulgation of those rules, promulgate emergency rules
223 pursuant to those provisions for those purposes.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Jerry Wells

Chairman, House Committee

Robert Hoban

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Bryan M. Bay

Clerk of the House of Delegates

Joseph McMiner

Clerk of the Senate

Richard B. ...

Speaker of the House of Delegates

Jeffery ...

President of the Senate

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2013 APR 23 AM 9:04
SECRETARY OF STATE

The within is approved this the 22nd
day of April, 2013.

Carl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

APR 17 2013

Time 11:24 am