

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4319**

(BY DELEGATES WELD, MCGEEHAN, J. NELSON,  
COOPER, IRELAND, LONGSTRETH, ANDERSON AND FRICH)

[Originated in the Committee on Finance;

February 17, 2016.]



1 A BILL to amend and reenact §59-1-2a of the Code of West Virginia, 1931, as amended, relating  
2 to defining the term “veteran” as that term pertains to veteran-owned businesses.

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

1 That §59-1-2a of the Code of West Virginia, 1931, as amended, be amended and  
2 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 subsection (c) of this section that is to  
3 be 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 subsection (b), section one thousand five hundred one, article  
10 fifteen, chapter thirty-one-d of this code, except for the activity of conducting affairs in interstate  
11 commerce when activity occurs in this state, nor does it mean any of the activities of foreign limited  
12 liability companies enumerated in subsection (a), section one thousand three, article ten, chapter  
13 thirty-one-b of this code, except for the activity of conducting affairs in interstate commerce when  
14 activity occurs in this state.

15 (3) “Corporation” means a “domestic corporation”, a “foreign corporation” or a “nonprofit  
16 corporation”.

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

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

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

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

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

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

30 (10) "Nonprofit corporation" means a nonprofit corporation as defined by section one  
31 hundred fifty, article one, chapter thirty-one-e of this code.

32 (11) "Registration fee" means the fee for the issuance of a certificate relating to the initial  
33 registration of a corporation, limited partnership, domestic limited liability company or foreign  
34 limited liability company described in subdivision (2), subsection (a), section two of this article.  
35 The term "initial registration" also means the date upon which the registration fee is paid.

36 (12) "Veteran" means the term as defined by subsection (a), section seven, article one,  
37 chapter nine-a of this code. Notwithstanding ~~anything~~ any provision in this code to the contrary, a  
38 veteran must be honorably discharged or under honorable conditions, and as described in 38 U.  
39 S. C. §101. For purposes of this section, and section two of this article, the term "veteran" also  
40 includes active members of the Guard and Reserve components of the Armed Forces of the  
41 United States.

42 (13) "Veteran-owned business" means a business that meets the following criteria:

43 (A) Is at least fifty-one percent unconditionally owned by one or more veterans; or

44 (B) In the case of a publically owned business, at least fifty-one percent of the stock is  
45 unconditionally owned by one or more veterans.

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

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

64           (d) *Annual report.* —

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

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

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

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

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

99           (f) *Deposit of fees.* — The annual report fees received by the Secretary of State pursuant  
100 to this section shall be deposited by the Secretary of State in the general administrative fees  
101 account established by section two of this article.

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

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

120           (h) *Late fees.* —

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

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

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

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

130 (2) The Secretary of State shall deposit the first \$25,000 of fees collected under this  
131 subsection into the General Administrative Fees Account established in subsection (h), section  
132 two of this article and shall deposit any additional fees collected under this section into the General  
133 Revenue Fund of the state.

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

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

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

151 company until the same is paid and filed in the manner provided for the suspension, cancellation  
152 or withholding of business registration certificates for other reasons under article twelve, chapter  
153 eleven of this code.

154 (j) *Purchase of data.* — The Secretary of State will provide electronically, for purchase,  
155 any data maintained in the Secretary of States Business Organizations Database. For the  
156 electronic purchase of the entire Business Organizations Database, the cost is \$12,000. For the  
157 purchase of the monthly updates of the Business Organizations Database, the cost is \$1,000 per  
158 month. The fees received by the Secretary of State pursuant to this subsection shall be deposited  
159 by the Secretary of State in the general administrative fees account established by section two of  
160 this article.

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

164 (l) *Rules.* — The Secretary of State may propose rules for legislative approval, in  
165 accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement  
166 this article.

167 (m) A veteran-owned business, as defined in paragraph thirteen, subsection (a) of this  
168 section, commenced on or after July 1, 2015, is exempt from paying the annual report fee,  
169 required by this section, for the first four years after its initial registration: *Provided*, That a veteran-  
170 owned business is not exempt from any filing deadlines or other fees required by this section.