

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 573

BY SENATOR SMITH

[Introduced March 5, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §59-1-2a of the Code of West Virginia, 1931, as amended, relating
2 to 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 §59-1-2a(c) of this code 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 corporation
20 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
26 a 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.C.
36 §101. Notwithstanding any provision in this code to the contrary, a veteran ~~must~~ shall be
37 honorably discharged or under honorable conditions as described in 38 U.S.C. §101.

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

39 (A) Is at least 51 percent unconditionally owned by one or more veterans; or

40 (B) In the case of a publicly owned business, at least 51 percent of the stock is
41 unconditionally owned by one or more veterans.

42 (b) *Required payment of annual report fee and filing of annual report.* – After June 30,
43 2008, no corporation, limited partnership, domestic limited liability company, or foreign limited
44 liability company may engage in any business activity in this state without paying the annual report

45 fee and filing the annual report as required by this section.

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

60 (d) *Annual report.* –

61 (1) After June 30, 2008, each corporation, limited partnership, domestic limited liability
62 company, and foreign limited liability company engaged in or authorized to do business in this
63 state shall file an annual report. The report is due each year after the initial registration of the
64 corporation, limited partnership, domestic limited liability company, or foreign limited liability
65 company with the annual report fee described in §59-1-2a(c) of this code on or before the dates
66 specified in §59-1-2a(e) of this code. The report is due each year from corporations, limited
67 partnerships, domestic limited liability companies, and foreign limited liability companies that paid
68 the registration fee prior to July 1, 2008, on or before the dates specified in §59-1-2a(e) of this
69 code.

70 (2)(A) The annual report shall be filed with the Secretary of State on forms provided by

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

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

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

95 (f) *Deposit of fees.* – The annual report fees received by the Secretary of State pursuant
96 to this section shall be deposited by the Secretary of State in the General Administrative Fees

97 Account established by §59-1-2 of this code.

98 (g)(1) *Duty to pay.* – It shall be the duty of each corporation, limited partnership, limited
99 liability company, and foreign limited liability company required to pay the annual report fees
100 imposed under this article to remit them with a properly completed annual report to the Secretary
101 of State, and if it fails to do so it shall be subject to the late fees prescribed in §59-1-2a(h) of this
102 code and dissolution or revocation, pursuant to this code: *Provided*, That before dissolution or
103 revocation for failure to pay fees may occur, the Secretary of State shall notify the entity by
104 certified mail, return receipt requested, of its failure to pay, all late fees or bad check fees
105 associated with the failure to pay, and the date upon which dissolution or revocation ~~will~~ shall
106 occur if all fees are not paid in full. The certified mail required by this subdivision shall be
107 postmarked at least 30 days before the dissolution or revocation date listed in the notice.

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

116 (h) *Late fees.* –

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

119 (A) *Administrative late fee.* – The Secretary of State shall assess upon each corporation,
120 limited partnership, limited liability company, and foreign limited liability company delinquent in
121 the payment of an annual report fee or the filing of an annual report an administrative late fee in
122 the amount of \$50.

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

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

130 (i) *Reports to Tax Commissioner; suspension, cancellation or withholding of business*
131 *registration certificate.* –

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

141 (2) Notwithstanding any other provisions of this code to the contrary, upon receipt of notice
142 from the Secretary of State that a corporation, limited partnership, limited liability company, and
143 foreign limited liability company is more than 30 days delinquent in the payment of annual report
144 fees or in the filing of an annual report required by this section, the Tax Commissioner may
145 suspend, cancel or withhold a business registration certificate issued to or applied for by the
146 delinquent corporation, limited partnership, limited liability company, or foreign limited liability
147 company until the same is paid and filed in the manner provided for the suspension, cancellation
148 or withholding of business registration certificates for other reasons under §11-12-1 *et seq.* of this

149 code.

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

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

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

162 (m) A veteran-owned business, as defined in §59-1-2a(a)(13) of this code, commenced
163 on or after July 1, 2015, is exempt from paying the annual report fee, required by this section, for
164 the first four years after its initial registration: *Provided*, That a veteran-owned business is not
165 exempt from any filing deadlines or other fees required by this section.

166 (n) Any person, firm, corporation, or association that is a nongovernmental entity who
167 solicits the purchase of or payment for a product or service from businesses for annual report
168 filing under subsection (d) of this section by means of a mailing, electronic mail, or facsimile, shall
169 include all of the following requirements on each solicitation:

170 (1) Conspicuously display in the heading of the solicitation a disclosure on the front and
171 back of each page, the following statement in 16-point bold Helvetica font and in all capital letters:
172 “THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY ANY
173 GOVERNMENT AGENCY, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE
174 GOVERNMENT”;

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

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

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

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

NOTE: The purpose of this bill is to require certain disclosures on solicitations mailed or otherwise provided to businesses by third-party, nongovernmental entities offering unsolicited products or services for filing an annual report with the Secretary of State, and to create criminal penalties and civil remedies to persons harmed by violations.

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