

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

Senate Bill 670

BY SENATORS MARTIN, TARR, DEEDS, TAYLOR, AND

WILLIS

[Reported February 21, 2026, from the Committee on
the Judiciary]

1 A BILL to amend and reenact §46-1-201, §59-1-2, and §59-1-2a of the Code of West Virginia,
2 1931, as amended; and to amend the code by adding a new article, designated §31B-14-
3 101, §31B-14-102, §31B-14-103, §31B-14-104, §31B-14-105, §31B-14-106, §31B-14-
4 107, §31B-14-108, §31B-14-201, §31B-14-202, §31B-14-203, §31B-14-204, §31B-14-
5 205, §31B-14-206, §31B-14-301, §31B-14-302, §31B-14-303, §31B-14-304, §31B-14-
6 305, §31B-14-401, §31B-14-402, §31B-14-403, §31B-14-404, §31B-14-501, §31B-14-
7 502, §31B-14-503, §31B-14-601, §31B-14-602, §31B-14-603, §31B-14-604, §31B-14-
8 605, §31B-14-606, §31B-14-607, §31B-14-608, §31B-14-701, §31B-14-702, §31B-14-
9 703, and §31B-14-704, relating to the adoption of the Uniform Protected Series Act;
10 providing citation; defining terms; creating series limited liability companies and protected
11 series of series limited liability companies; detailing the powers, duties, responsibilities,
12 and duration of a protected series of a series limited liability company; specifying the law
13 that governs the internal affairs of protected series; detailing the effect and limitations of
14 operating agreement; creating rules of statutory construction; creating procedures for
15 establishing a protected series of a series limited liability company; specifying
16 requirements for naming protected series; providing agency for entities; establishing the
17 mechanism to serve a protected series of a series limited liability company and a foreign
18 series limited liability company; requiring the Secretary of State to issue certificates of
19 good standing upon request for protected series of a series limited liability company and
20 foreign series limited liability companies; requiring series limited liability companies to
21 provide an annual report; providing for procedures and limitations on associating assets
22 and members with a protected series of a series limited liability company; providing for the
23 transfer of a protected series distributional interest; establishing the rules for management
24 of protected series of a series limited liability company; creating member's right to
25 information regarding the protected series of a series limited liability company; limiting the
26 liability of protected series of a series limited liability company, series limited liability

27 companies, members, transferees, and managers; providing circumstances where the
28 liability limitation may be disregarded; applying provisions of the Uniform Limited Liability
29 Company Act to judgment creditors; providing for the enforcement of judgments against
30 series limited liability companies and protected series of a series limited liability company;
31 providing for the events causing the dissolution of a protected series of a series limited
32 liability company; providing procedures to wind up a dissolved protected series of a series
33 limited liability company; establishing the effect of reinstating of a series limited liability
34 company or the revocation of voluntary dissolution; limiting the ability for protected series
35 of a series limited liability company and series limited companies authority regarding
36 transactions and mergers; providing requirements for a series limited liability company to
37 be a party to a merger, including a plan of merger and articles of merger; providing effect
38 of a merger; specifying law governing a foreign series limited liability company; providing
39 for the attribution of activities that establishes personal jurisdiction over foreign series
40 limited liability companies and foreign protected series of a series limited liability company;
41 providing for the registration requirements of foreign protected series of a foreign series
42 limited liability company; establishing disclosure requirements when a foreign series
43 limited liability company or foreign protected series becomes a party to a proceeding;
44 establishing fees associated with series limited liability companies and protected series;
45 and expanding the uniform commercial code definition of person to include a protected
46 series.

Be it enacted by the Legislature of West Virginia:

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 14. UNIFORM PROTECTED SERIES ACT.

§31B-14-101. Short title.

1 This act may be cited as the Uniform Protected Series Act.

§31B-14-102. Definitions.

1 In this chapter:

2 "Asset" means property in which a series limited liability company or protected series has
3 rights; or as to which the company or protected series has the power to transfer rights.

4 "Associated asset" means an asset that meets the requirements of §31B-14-301 of this
5 code.

6 "Associated member" means a member that meets the requirements of §31B-14-302.

7 "Foreign protected series" means an arrangement, configuration, or other structure
8 established by a foreign limited liability company which has attributes comparable to a protected
9 series established under this chapter. The term applies whether or not the law under which the
10 foreign company is organized refers to "protected series".

11 "Foreign series limited liability company" means a foreign limited liability company that has
12 at least one foreign protected series.

13 "Jurisdiction of formation" means the jurisdiction whose law governs the internal affairs
14 of an entity.

15 "Non-associated asset" means:

16 An asset of a series limited liability company which is not an associated asset of the
17 company; or an asset of a protected series of the company which is not an associated asset of
18 the protected series.

19 "Person" includes a protected series.

20 "Protected series", except in the phrase "foreign protected series", means a protected
21 series established under §31B-14-201.

22 "Protected-series manager" means a person under whose authority the powers of a
23 protected series are exercised and under whose direction the activities and affairs of the protected
24 series are managed under the operating agreement and this chapter.

25 "Protected-series distributional interest" means a right to receive a distribution from a
26 protected series.

27 "Protected-series transferee" means a person to which all or part of a protected-series
28 distributional interest of a protected series of a series limited liability company has been
29 transferred, other than the company. The term includes a person that owns a protected-series
30 distributional interest as a result of ceasing to be an associated member of a protected series.

31 "Series limited liability company" or "company", except in the phrase "foreign series limited
32 liability company", means a limited liability company that has at least one protected series.

§31B-14-103. Nature of protected series.

1 A protected series of a series limited liability company is a person distinct from:

2 (1) The company, subject to §31B-14-104(c), §31B-14-501(1), and §31B-14-502(d);

3 (2) Another protected series of the company;

4 (3) A member of the company, whether or not the member is an associated member of
5 the protected series;

6 (4) A protected-series transferee of a protected series of the company; and

7 (5) A transferee of a distributional interest of the company.

§31B-14-104. Powers and duration of protected series.

1 (a) A protected series of a series limited liability company has the capacity to sue and be
2 sued in its own name.

3 (b) Except as otherwise provided in subsections (c) and (d) of this section, a protected
4 series of a series limited liability company has the same powers and purposes as the company.

5 (c) A protected series of a series limited liability company ceases to exist not later than
6 when the company completes its winding up.

7 (d) A protected series of a series limited liability company may not:

8 (1) Be a member of the company;

9 (2) Establish a protected series; or

10 (3) Except as permitted by law of this state other than this chapter, have a purpose or
11 power that the law of this state other than this chapter prohibits a limited liability company from
12 doing or having.

§31B-14-105. Governing law.

1 The law of this state governs:

2 (1) The internal affairs of a protected series of a series limited liability company, including:

3 (A) Relations among any associated members of the protected series;

4 (B) Relations among the protected series and:

5 (i) Any associated member;

6 (ii) The protected-series manager; or

7 (iii) Any protected-series transferee;

8 (C) Relations between any associated member and:

9 (i) The protected-series manager; or

10 (ii) Any protected-series transferee;

11 (D) The rights and duties of a protected-series manager;

12 (E) Governance decisions affecting the activities and affairs of the protected series and

13 the conduct of those activities and affairs; and

14 (F) Procedures and conditions for becoming an associated member or protected-series

15 transferee;

16 (2) The relations between a protected series of a series limited liability company and each

17 of the following:

18 (A) The company;

19 (B) Another protected series of the company;

20 (C) A member of the company which is not an associated member of the protected series;

21 (D) A protected-series manager that is not a protected-series manager of the protected

22 series; and

23 (E) A protected-series transferee that is not a protected-series transferee of the protected
24 series;

25 (3) The liability of a person for a debt, obligation, or other liability of a protected series of
26 a series limited liability company if the debt, obligation, or liability is asserted solely by reason of
27 the person being or acting as:

28 (A) An associated member, protected-series transferee, or protected-series manager of
29 the protected series;

30 (B) A member of the company which is not an associated member of the protected series;

31 (C) A protected-series manager that is not a protected-series manager of the protected
32 series;

33 (D) A protected-series transferee that is not a protected-series transferee of the protected
34 series;

35 (E) A manager of the company; or

36 (F) A transferee of a distributional interest of the company;

37 (4) The liability of a series limited liability company for a debt, obligation, or other liability
38 of a protected series of the company if the debt, obligation, or liability is asserted solely by reason
39 of the company:

40 (A) Having delivered to the Secretary of State for filing under §31B-14-201(b) a protected
41 series designation pertaining to the protected series or under §31B-14-201(d) or §31B-14-202(c)
42 a statement of designation change pertaining to the protected series;

43 (B) Being or acting as a protected-series manager of the protected series;

44 (C) Having the protected series be or act as a manager of the company; or

45 (D) Owning a protected-series distributional interest of the protected series; and

46 (5) The liability of a protected series of a series limited liability company for a debt,
47 obligation, or other liability of the company or of another protected series of the company if the
48 debt, obligation, or liability is asserted solely by reason of:

49 (A) The protected series:

50 (i) Being a protected series of the company or having as a protected-series manager the
51 company or another protected series of the company; or

52 (ii) Being or acting as a protected-series manager of another protected series of the
53 company or a manager of the company; or

54 (B) The company owning a protected-series distributional interest of the protected series.

§31B-14-106. Effect of operating agreement.

1 (a) Except as otherwise provided in this section and subject to §31B-14-107 and §31B-14-
2 108, the operating agreement of a series limited liability company governs:

3 (1) The internal affairs of a protected series, including:

4 (A) Relations among any associated members of the protected series;

5 (B) Relations among the protected series and:

6 (i) Any associated member;

7 (ii) The protected-series manager; or

8 (iii) Any protected-series transferee;

9 (C) Relations between any associated member and:

10 (i) The protected-series manager; or

11 (ii) Any protected-series transferee;

12 (D) The rights and duties of a protected-series manager;

13 (E) Governance decisions affecting the activities and affairs of the protected series and the
14 conduct of those activities and affairs; and

15 (F) Procedures and conditions for becoming an associated member or protected-series
16 transferee;

17 (2) Relations among the protected series, the company, and any other protected series of
18 the company;

19 (3) Relations between:

20 (A) The protected series, its protected-series manager, any associated member of the
21 protected series, or any protected-series transferee of the protected series; and

22 (B) A person in the person's capacity as:

23 (i) A member of the company which is not an associated member of the protected series;

24 (ii) A protected-series transferee or protected-series manager of another protected series;

25 or

26 (iii) A transferee of the company.

27 (b) If chapter 31B of this code restricts the power of an operating agreement to affect a
28 matter, the restriction applies to a matter under §31B-14-108.

29 (c) If law of this state other than this article imposes a prohibition, limitation, requirement,
30 condition, obligation, liability, or other restriction on a limited liability company, a member,
31 manager, or other agent of the company, or a transferee of the company, except as otherwise
32 provided in law of this state other than this article, the restriction applies in accordance with §31B-
33 14-108.

34 (d) Except as otherwise provided in §31B-14-107, if the operating agreement of a series
35 limited liability company does not provide for a matter described in subsection (a) of this section
36 in a manner permitted by this article, the matter is determined in accordance with the following
37 rules:

38 (1) To the extent this article addresses the matter, this article governs.

39 (2) To the extent this article does not address the matter, chapter 31B of this code governs
40 the matter in accordance with §31B-14-108.

§31B-14-107. Additional limitations on operating agreement.

1 An operating agreement may not vary the effect of:

2 (1) §31B-14-107;

3 (2) §31B-14-103;

4 (3) §31B-14-104(a);

- 5 (4) §31B-14-104(b) to provide a protected series a power beyond the powers chapter 31B
6 of this code provides a limited liability company;
- 7 (5) §31B-14-104(c) or (d);
- 8 (6) §31B-14-105;
- 9 (7) §31B-14-106;
- 10 (8) §31B-14-108;
- 11 (9) §31B-14-201, except to vary the manner in which a limited liability company approves
12 establishing a protected series;
- 13 (10) §31B-14-202;
- 14 (11) §31B-14-203;
- 15 (12) §31B-14-302;
- 16 (13) §31B-14-303(a) or (b);
- 17 (14) §31B-14-304(c), (f), or (g);
- 18 (15) §31B-14-401, except to decrease or eliminate a limitation of liability stated in §31B-
19 14-401;
- 20 (16) §31B-14-402;
- 21 (17) §31B-14-403;
- 22 (18) §31B-14-404;
- 23 (19) §31B-14-501(1), (4), and (5);
- 24 (20) §31B-14-502, except to designate a different person to manage winding up;
- 25 (21) §31B-14-503;
- 26 (22) §31B-14-601 et seq.;
- 27 (23) §31B-14-701 et seq.;
- 28 (A) The manner in which a series limited liability company may elect under §31B-14-
29 803(a)(2) to be subject to this article; or

30 (B) The person that has the right to sign and deliver to the Secretary of State for filing a
31 record under §31B-14-803(b)(2); or

32 (25) A provision of this article pertaining to:

33 (A) Registered agents; or

34 (B) The Secretary of State, including provisions pertaining to records authorized or
35 required to be delivered to the Secretary of State for filing under this article.

§31B-14-108. Rules for applying limited liability company act.

1 (a) Except as otherwise provided in subsection (b) of this section and §31B-14-107, the
2 following rules apply in applying §31B-14-106, §31B-14-304(c) and (f), §31B-14-501(4)(A), §31B-
3 14-502(a), and §31B-14-503(2):

4 (1) A protected series of a series limited liability company is deemed to be a limited liability
5 company that is formed separately from the series limited liability company and is distinct from
6 the series limited liability company and any other protected series of the series limited liability
7 company.

8 (2) An associated member of the protected series is deemed to be a member of the
9 company deemed to exist under §31B-14-108(a)(1) of this code.

10 (3) A protected-series transferee of the protected series is deemed to be a transferee of
11 the company deemed to exist under §31B-14-108(a)(1) of this code.

12 (4) A protected-series distributional interest of the protected series is deemed to be a
13 distributional interest of the company deemed to exist under §31B-14-108(a)(1) of this code.

14 (5) A protected-series manager is deemed to be a manager of the company deemed to
15 exist under §31B-14-108(a)(1).

16 (6) An asset of the protected series is deemed to be an asset of the company deemed to
17 exist under §31B-14-108(a)(1) of this code, whether or not the asset is an associated asset of the
18 protected series.

19 (7) Any creditor or other obligee of the protected series is deemed to be a creditor or
20 obligee of the company deemed to exist under §31B-14-108(a)(1) of this code.

21 (b) Subsection (a) of this section does not apply if its application would:

22 (1) Contravene §31B-1-103 of this code; or

23 (2) Authorize or require the Secretary of State to:

24 (A) Accept for filing a type of record that neither this article nor chapter 31B of this code
25 authorizes or requires a person to deliver to the Secretary of State for filing; or

26 (B) Make or deliver a record that neither this article nor chapter 31B of this code authorizes
27 or requires the Secretary of State to make or deliver.

§31B-14-201. Protected series designation; amendment.

1 (a) With the affirmative vote or consent of all members of a limited liability company, the
2 company may establish a protected series.

3 (b) To establish a protected series, a limited liability company shall deliver to the Secretary
4 of State for filing a protected series designation, signed by the company, stating the name of the
5 company and the name of the protected series to be established.

6 (c) A protected series is established when the protected series designation takes effect
7 under §31B-2-206 of this code.

8 (d) To amend a protected series designation, a series limited liability company shall deliver
9 to the Secretary of State for filing a statement of designation change, signed by the company, that
10 changes the name of the company, the name of the protected series to which the designation
11 applies, or both. The change takes effect when the statement of designation change takes effect
12 under §31B-2-206 of this code.

§31B-14-202. Name.

1 (a) Except as otherwise provided in subsection (b) of this section, the name of a protected
2 series must comply with §31B-1-105 of this code.

3 (b) The name of a protected series of a series limited liability company must:

4 (1) Begin with the name of the company, including any word or abbreviation required by
5 §31B-1-105(a) of this code; and

6 (2) Contain the phrase "Protected Series" or "protected series" or the abbreviation "P.S."
7 or "PS".

8 (c) If a series limited liability company changes its name, the company shall deliver to the
9 Secretary of State for filing a statement of designation change for each of the company's protected
10 series, changing the name of each protected series to comply with §31B-14-202 of this code.

§31B-14-203. Registered agent.

1 (a) The registered agent in this state for a series limited liability company is the registered
2 agent in this state for each protected series of the company.

3 (b) Before delivering a protected series designation to the Secretary of State for filing, a
4 limited liability company shall agree with a registered agent that the agent will serve as the
5 registered agent in this state for both the company and the protected series.

6 (c) A person that signs a protected series designation delivered to the Secretary of State
7 for filing affirms as a fact that the limited liability company on whose behalf the designation is
8 delivered has complied with subsection (b) of this section.

9 (d) A person that ceases to be the registered agent for a series limited liability company
10 ceases to be the registered agent for each protected series of the company.

11 (e) A person that ceases to be the registered agent for a protected series of a series limited
12 liability company, other than as a result of the termination of the protected series, ceases to be
13 the registered agent of the company and any other protected series of the company.

14 (f) Except as otherwise agreed by a series limited liability company and its registered
15 agent, the agent is not obligated to distinguish between a process, notice, demand, or other record
16 concerning the company and a process, notice, demand, or other record concerning a protected
17 series of the company.

§31B-14-204. Service of process, notice, demand, or other record.

1 (a) A protected series of a series limited liability company may be served with a process,
2 notice, demand, or other record required or permitted by law by:

3 (1) Serving the company;

4 (2) Serving the registered agent of the protected series; or

5 (3) Other means authorized by law of this state other than chapter 31B of this code of this
6 code.

7 (b) Service of a summons and complaint on a series limited liability company is notice to
8 each protected series of the company of service of the summons and complaint and the contents
9 of the complaint.

10 (c) Service of a summons and complaint on a protected series of a series limited liability
11 company is notice to the company and any other protected series of the company of service of
12 the summons and complaint and the contents of the complaint.

13 (d) Service of a summons and complaint on a foreign series limited liability company is
14 notice to each foreign protected series of the foreign company of service of the summons and
15 complaint and the contents of the complaint.

16 (e) Service of a summons and complaint on a foreign protected series of a foreign series
17 limited liability company is notice to the foreign company and any other foreign protected series
18 of the company of service of the summons and complaint and the contents of the complaint.

19 (f) Notice to a person under subsection (b), (c), (d), or (e) of this section is effective whether
20 or not the summons and complaint identify the person if the summons and complaint name as a
21 party and identify:

22 (1) The series limited liability company or a protected series of the company; or

23 (2) The foreign series limited liability company or a foreign protected series of the foreign
24 company.

§31B-14-205. Certificate of good standing for protected series.

1 (a) On request of any person, the Secretary of State shall issue a certificate of good
2 standing for a protected series of a series limited liability company or a certificate of registration
3 for a foreign protected series if:

4 (1) In the case of a protected series:

5 (A) No statement of dissolution, termination, or relocation pertaining to the protected series
6 has been filed; and

7 (B) The company has delivered to the Secretary of State for filing the most recent annual
8 report required by §31B-2-211 of this code and the report includes the name of the protected
9 series, unless:

10 (i) When the company delivered the report for filing, the protected series designation
11 pertaining to the protected series had not yet taken effect; or

12 (ii) After the company delivered the report for filing, the company delivered to the Secretary
13 of State for filing a statement of designation change changing the name of the protected series;
14 or

15 (2) In the case of a foreign protected series, it is registered to do business in this state.

16 (b) A certificate issued under subsection (a) of this section must state:

17 (1) In the case of a protected series:

18 (A) The name of the protected series of the series limited liability company and the name
19 of the company;

20 (B) That the requirements of subsection (a) of this section are met;

21 (C) The date the protected series designation pertaining to the protected series took effect;

22 and

23 (D) If a statement of designation change pertaining to the protected series has been filed,
24 the effective date and contents of the statement;

25 (2) In the case of a foreign protected series, that it is registered to do business in this state;

26 (3) That the fees, taxes, interest, and penalties owed to this state by the protected series
27 or foreign protected series and collected through the Secretary of State have been paid, if:

28 (A) Payment is reflected in the records of the Secretary of State; and

29 (B) Nonpayment affects the good standing of the protected series; and

30 (4) Other facts reflected in the records of the Secretary of State pertaining to the protected
31 series or foreign protected series which the person requesting the certificate reasonably requests.

32 (c) Subject to any qualification stated by the Secretary of State in a certificate issued under
33 subsection (a) of this section, the certificate may be relied on as conclusive evidence of the facts
34 stated in the certificate.

§31B-14-206. Information required in annual report; effect of failure to provide.

1 (a) In the annual report required by §31B-2-211 of this code, a series limited liability
2 company shall include the name of each protected series of the company:

3 (1) For which the company has previously delivered to the Secretary of State for filing a
4 protected series designation; and

5 (2) Which has not dissolved and completed winding up.

6 (b) A failure by a series limited liability company to comply with subsection (a) of this
7 section with regard to a protected series prevents issuance of a certificate of good standing
8 pertaining to the protected series but does not otherwise affect the protected series.

§31B-14-301. Associated asset.

1 (a) Only an asset of a protected series may be an associated asset of the protected series.
2 Only an asset of a series limited liability company may be an associated asset of the company.

3 (b) An asset of a protected series of a series limited liability company is an associated
4 asset of the protected series only if the protected series creates and maintains records that state
5 the name of the protected series and describe the asset with sufficient specificity to permit a
6 disinterested, reasonable individual to:

7 (1) Identify the asset and distinguish it from any other asset of the protected series, any
8 asset of the company, and any asset of any other protected series of the company;

9 (2) Determine when and from what person the protected series acquired the asset or how
10 the asset otherwise became an asset of the protected series; and

11 (3) If the protected series acquired the asset from the company or another protected series
12 of the company, determine any consideration paid, the payor, and the payee.

13 (c) An asset of a series limited liability company is an associated asset of the company
14 only if the company creates and maintains records that state the name of the company and
15 describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

16 (1) Identify the asset and distinguish it from any other asset of the company and any asset
17 of any protected series of the company;

18 (2) Determine when and from what person the company acquired the asset or how the
19 asset otherwise became an asset of the company; and

20 (3) If the company acquired the asset from a protected series of the company, determine
21 any consideration paid, the payor, and the payee.

22 (d) The records and recordkeeping required by subsections (b) and (c) of this section may
23 be organized by specific listing, category, type, quantity, or computational or allocational formula
24 or procedure, including a percentage or share of any asset, or in any other reasonable manner.

25 (e) To the extent permitted by this section and law of this state other than this article, a
26 series limited liability company or protected series of the company may hold an associated asset
27 directly or indirectly, through a representative, nominee, or similar arrangement, except that:

28 (1) A protected series may not hold an associated asset in the name of the company or
29 another protected series of the company; and

30 (2) The company may not hold an associated asset in the name of a protected series of
31 the company.

§31B-14-302. Associated member.

1 (a) Only a member of a series limited liability company may be an associated member of
2 a protected series of the company.

3 (b) A member of a series limited liability company becomes an associated member of a
4 protected series of the company if the operating agreement or a procedure established by the
5 agreement states:

6 (1) That the member is an associated member of the protected series;

7 (2) The date on which the member became an associated member; and

8 (3) Any protected-series distributional interest the associated member has in connection
9 with becoming or being an associated member.

10 (c) If a person that is an associated member of a protected series of a series limited liability
11 company is dissociated from the company, the person ceases to be an associated member of the
12 protected series.

§31B-14-303. Protected-series distributional interest.

1 (a) A protected-series distributional interest of a protected series of a series limited liability
2 company must be owned initially by an associated member of the protected series or the
3 company.

4 (b) If a protected series of a series limited liability company has no associated members
5 when established, the company owns the protected-series distributional interests in the protected
6 series.

7 (c) In addition to acquiring a protected series transferable series interest under subsection
8 (b) of this section, a series limited liability company may acquire a protected-series distributional
9 interest through a transfer from another person or as provided in the operating agreement.

10 (d) Except for §31B-14-108(a)(3), a provision of this article which applies to a protected-
11 series transferee of a protected series of a series limited liability company applies to the company
12 in its capacity as an owner of a protected-series distributional interest of the protected series. A
13 provision of the operating agreement of a series limited liability company which applies to a

14 protected-series transferee of a protected series of the company applies to the company in its
15 capacity as an owner of a protected-series distributional interest of the protected series.

§31B-14-304. Management.

1 (a) A protected series may have more than one protected-series manager.

2 (b) If a protected series has no associated members, the series limited liability company
3 is the protected-series manager.

4 (c) §31B-14-108 applies to determine any duties of a protected-series manager of a
5 protected series of a series limited liability company to:

6 (1) The protected series;

7 (2) Any associated member of the protected series; and

8 (3) Any protected-series transferee of the protected series.

9 (d) Solely by reason of being or acting as a protected-series manager of a protected series
10 of a series limited liability company, a person owes no duty to:

11 (1) The company;

12 (2) Another protected series of the company; or

13 (3) Another person in that person's capacity as:

14 (A) A member of the company which is not an associated member of the protected series;

15 (B) A protected-series transferee or protected-series manager of another protected series;

16 or

17 (C) A transferee of the company.

18 (e) An associated member of a protected series of a series limited liability company has
19 the same rights as any other member of the company to vote on or consent to an amendment to
20 the company's operating agreement or any other matter being decided by the members, whether
21 or not the amendment or matter affects the interests of the protected series or the associated
22 member.

23 (f) §31B-11-1101 et seq. of this code applies to a protected series in accordance with
24 §31B-14-108.

25 (g) An associated member of a protected series is an agent for the protected series with
26 power to bind the protected series to the same extent that a member of a limited liability company
27 is an agent for the company with power to bind the company under §31B-3-301 of this code.

§31B-14-305. Right to information concerning protected series.

1 (a) A member of a series limited liability company which is not an associated member of
2 a protected series of the company has a right to information concerning the protected series to
3 the same extent, in the same manner, and under the same conditions that a member that is not
4 a manager of a manager-managed limited liability company has a right to information concerning
5 the company under §31B-4-408 of this code.

6 (b) A person formerly an associated member of a protected series has a right to
7 information concerning the protected series to the same extent, in the same manner, and under
8 the same conditions that a person dissociated as a member of a manager-managed limited
9 liability company has a right to information concerning the company under §31B-4-408 of this
10 code.

11 (c) If an associated member of a protected series dies, the legal representative of the
12 deceased associated member has a right to information concerning the protected series to the
13 same extent, in the same manner, and under the same conditions that the legal representative of
14 a deceased member of a limited liability company has a right to information concerning the
15 company under §31B-4-408 of this code.

§31B-14-401. Limitations on liability.

1 (a) A person is not liable, directly or indirectly, by way of contribution or otherwise, for a
2 debt, obligation, or other liability of:

3 (1) A protected series of a series limited liability company solely by reason of being or
4 acting as:

5 (A) An associated member, protected-series manager, or protected series transferee of
6 the protected series; or

7 (B) A member, manager, or a transferee of the company; or

8 (2) A series limited liability company solely by reason of being or acting as an associated
9 member, protected-series manager, or protected-series transferee of a protected series of the
10 company.

11 (b) Subject to §31B-14-404, the following rules apply:

12 (1) A debt, obligation, or other liability of a series limited liability company is solely the
13 debt, obligation, or liability of the company.

14 (2) A debt, obligation, or other liability of a protected series is solely the debt, obligation,
15 or liability of the protected series.

16 (3) A series limited liability company is not liable, directly or indirectly, by way of
17 contribution or otherwise, for a debt, obligation, or other liability of a protected series of the
18 company solely by reason of the protected series being a protected series of the company or the
19 company:

20 (A) Being or acting as a protected-series manager of the protected series;

21 (B) Having the protected series manage the company; or

22 (C) Owning a protected-series distributional interest of the protected series.

23 (4) A protected series of a series limited liability company is not liable, directly or indirectly,
24 by way of contribution or otherwise, for a debt, obligation, or other liability of the company or
25 another protected series of the company solely by reason of:

26 (A) Being a protected series of the company;

27 (B) Being or acting as a manager of the company or a protected-series manager of another
28 protected series of the company; or

29 (C) Having the company or another protected series of the company be or act as a
30 protected-series manager of the protected series.

§31B-14-402. Claim seeking to disregard limitation of liability.

1 (a) Except as otherwise provided in subsection (b) of this section, a claim seeking to
2 disregard a limitation in §31B-14-401 is governed by the principles of law and equity, including a
3 principle providing a right to a creditor or holding a person liable for a debt, obligation, or other
4 liability of another person, which would apply if each protected series of a series limited liability
5 company were a limited liability company formed separately from the series limited liability
6 company and distinct from the series limited liability company and any other protected series of
7 the series limited liability company.

8 (b) The failure of a limited liability company or a protected series to observe the usual
9 company formalities or requirements relating to the exercise of its company powers or
10 management of its business is not a ground to disregard a limitation in §31B-14-401(a) but may
11 be a ground to disregard a limitation in §31B-14-401(b).

12 (c) This section applies to a claim seeking to disregard a limitation of liability applicable to
13 a foreign series limited liability company or foreign protected series and comparable to a limitation
14 stated in §31B-14-401, if:

15 (1) The claimant is a resident of this state or doing business or registered to do business
16 in this state; or

17 (2) The claim is to establish or enforce a liability arising under law of this state other than
18 this article or from an act or omission in this state.

§31B-14-403. Remedies of judgment creditor of associated member or protected-series transferee.

1 §31B-5-504 of this code applies to a judgment creditor of:

2 (1) An associated member or protected-series transferee of a protected series; or

3 (2) A series limited liability company, to the extent the company owns a protected-series
4 distributional interest of a protected series.

§31B-14-404. Enforcement against non-associated asset.

1 (a) In this section:

2 (1) "Enforcement date" means 12:01 a.m. on the date on which a claimant first serves
3 process on a series limited liability company or protected series in an action seeking to enforce
4 under this section a claim against an asset of the company or protected series by attachment,
5 levy, or the like.

6 (2) Subject to §31B-14-608(b), "incurrence date" means the date on which a series limited
7 liability company or protected series incurred the liability giving rise to a claim that a claimant
8 seeks to enforce under this section.

9 (b) If a claim against a series limited liability company or a protected series of the company
10 has been reduced to judgment, in addition to any other remedy provided by law or equity, the
11 judgment may be enforced in accordance with the following rules:

12 (1) A judgment against the company may be enforced against an asset of a protected
13 series of the company if the asset:

14 (A) Was a non-associated asset of the protected series on the incurrence date; or

15 (B) Is a non-associated asset of the protected series on the enforcement date.

16 (2) A judgment against a protected series may be enforced against an asset of the
17 company if the asset:

18 (A) Was a non-associated asset of the company on the incurrence date; or

19 (B) Is a non-associated asset of the company on the enforcement date.

20 (3) A judgment against a protected series may be enforced against an asset of another
21 protected series of the company if the asset:

22 (A) Was a non-associated asset of the other protected series on the incurrence date; or

23 (B) Is a non-associated asset of the other protected series on the enforcement date.

24 (c) In addition to any other remedy provided by law or equity, if a claim against a series
25 limited liability company or a protected series has not been reduced to a judgment and law other

26 than this article permits a prejudgment remedy by attachment, levy, or the like, the court may
27 apply subsection (b) of this section as a prejudgment remedy.

28 (d) In a proceeding under this section, the party asserting that an asset is or was an
29 associated asset of a series limited liability company or a protected series of the company has
30 the burden of proof on the issue.

31 (e) This section applies to an asset of a foreign series limited liability company or foreign
32 protected series if:

33 (1) The asset is real or tangible property located in this state;

34 (2) The claimant is a resident of this state or doing business or registered to do business
35 in this state, or the claim under §31B-14-404 is to enforce a judgment, or to seek a pre-judgment
36 remedy, pertaining to a liability arising from law of this state other than this article or an act or
37 omission in this state; and

38 (3) The asset is not identified in the records of the foreign series limited liability company
39 or foreign protected series in a manner comparable to the manner required by §31B-14-301.

§31B-14-501. Events causing dissolution of protected series.

1 A protected series of a series limited liability company is dissolved, and its activities and
2 affairs must be wound up on the:

3 (1) Dissolution of the company;

4 (2) Occurrence of an event or circumstance the operating agreement states causes
5 dissolution of the protected series;

6 (3) Affirmative vote or consent of all members; or

7 (4) Entry by the court of an order dissolving the protected series on application by an
8 associated member or protected-series manager of the protected series:

9 (A) In accordance with §31B-14-108 of this code; and

10 (B) To the same extent, in the same manner, and on the same grounds the court would
11 enter an order dissolving a limited liability company on application by a member or manager of
12 the company; or

13 (5) Entry by the court of an order dissolving the protected series on application by the
14 company or a member of the company on the ground that the conduct of all or substantially all
15 the activities and affairs of the protected series is illegal.

§31B-14-502. Winding up dissolved protected series.

1 (a) Subject to subsections (b) and (c) of this section and in accordance with §31B-14-108
2 of this code:

3 (1) A dissolved protected series shall wind up its activities and affairs in the same manner
4 that a limited liability company winds up its activities and affairs under §31B-8-801 et seq. of this
5 code subject to the same requirements and conditions and with the same effects; and

6 (2) Judicial supervision or another judicial remedy is available in the winding up of the
7 protected series to the same extent, in the same manner, under the same conditions, and with
8 the same effects that apply under §31B-8-803(a) of this code.

9 (b) A dissolved protected series or series limited liability company may publish notice of
10 its dissolution and request persons having claims against the company to present them in
11 accordance with the notice under §31B-8-808 of this code.

12 (c) At any time after dissolution and winding up, the company may terminate a series by
13 filing with the Secretary of State a statement of designation cancellation stating the name of the
14 company and the protected series and that the protected series is terminated. The filing of the
15 statement with the Secretary of State has the same effect as the filing by the Secretary of State
16 of articles of termination under §31B-8-805 of this code.

17 (d) A series limited liability company has not completed its winding up until each of the
18 protected series of the company has completed its winding up.

§31B-14-503. Effect of reinstatement of series limited company or revocation of voluntary dissolution.

1 (a) If a series limited liability company that has been administratively dissolved applies for
2 reinstatement, §31B-8-811 and §31B-8-812 of this code apply to each protected series of the
3 company in accordance with §31B-14-108 of this code.

4 (b) If, at any time after the dissolution of a series limited liability company and before the
5 winding up of its business is completed, the members, including a dissociated member whose
6 dissociation caused the dissolution, unanimously waive the right to have the company's business
7 wound up and the company terminated, §31B-8-802(b) of this code applies to each protected
8 series of the company in accordance with §31B-14-108 of this code.

§31B-14-601. Definitions.

1 In this article:

2 "After a merger" or "after the merger" means when a merger under §31B-14-604 of this
3 code becomes effective and afterwards.

4 "Before a merger" or "before the merger" means before a merger under §31B-14-604 of
5 this code becomes effective.

6 "Continuing protected series" means a protected series of a surviving company which
7 continues in uninterrupted existence after a merger under §31B-14-604 of this code.

8 "Merging company" means a limited liability company that is party to a merger under
9 §31B-14-604 of this code.

10 "Non-surviving company" means a merging company that does not continue in existence
11 after a merger under §31B-14-604 of this code.

12 "Relocated protected series" means a protected series of a non-surviving company which,
13 after a merger under §31B-14-604 of this code, continues in uninterrupted existence as a
14 protected series of the surviving company.

15 "Surviving company" means a merging company that continues in existence after a
16 merger under §31B-14-604 of this code.

§31B-14-602. Protected series may not be party to entity transaction.

1 A protected series may not:

2 (1) Acquire, be acquired, convert, merge, or survive a merger; or

3 (2) Be a party to or be formed, organized, established, or created in a transaction
4 substantially like a merger, interest exchange, or conversion.

§31B-14-603. Restriction on entity transaction involving protected series.

1 A series limited liability company may not:

2 (1) Acquire, be acquired, convert, or be converted; or

3 (2) Except as otherwise provided in §31B-14-604 of this code, be a party to or the surviving
4 company of a merger.

§31B-14-604. Merger authorized; parties restricted.

1 A series limited liability company may be party to a merger in accordance with §31B-9-
2 904, §31B-9-905, §31B-9-906, §31B-14-604, and §31B-14-605 through §31B-14-608 of this code
3 only if:

4 (1) Each other party to the merger is a limited liability company; and

5 (2) The surviving company is not created in the merger.

§31B-14-605. Plan of merger.

1 In a merger under §31B-14-604 of this code, the plan of merger must:

2 (1) Comply with §31B-9-904 of this code; and

3 (2) State in a record:

4 (A) For any protected series of a non-surviving company, whether after the merger the
5 protected series will be a relocated protected series or be dissolved, wound up, and terminated;

6 (B) For any protected series of the surviving company which exists before the merger,
7 whether after the merger the protected series will be a continuing protected series or be dissolved,
8 wound up, and terminated;

9 (C) For each relocated protected series or continuing protected series:

10 (i) The name of any person that becomes an associated member or protected-series
11 transferee of the protected series after the merger, any consideration to be paid by, on behalf of,
12 or in respect of the person, the name of the payor, and the name of the payee;

13 (ii) The name of any person whose rights or obligations in the person's capacity as an
14 associated member or protected-series transferee will change after the merger;

15 (iii) Any consideration to be paid to a person who before the merger was an associated
16 member or protected-series transferee of the protected series and the name of the payor; and

17 (iv) If after the merger the protected series will be a relocated protected series, its new
18 name;

19 (D) For any protected series to be established by the surviving company as a result of the
20 merger:

21 (i) The name of the protected series;

22 (ii) Any protected-series distributional interest to be owned by the surviving company when
23 the protected series is established; and

24 (iii) The name of and any protected-series distributional interest owned by any person that
25 will be an associated member of the protected series when the protected series is established;
26 and

27 (E) For any person that is an associated member of a relocated protected series and will
28 remain a member after the merger, any amendment to the operating agreement of the surviving
29 company which:

30 (i) Is or is proposed to be in a record; and

31 (ii) Is necessary or appropriate to state the rights and obligations of the person as a
32 member of the surviving company.

§31B-14-606. Articles of merger.

1 In a merger under §31B-14-604 of this code, the articles of merger must:

2 (1) Comply §31B-9-905 of this code; and

3 (2) Include as an attachment the following records, each to become effective when the
4 merger becomes effective:

5 (A) For a protected series of a merging company being terminated as a result of the
6 merger, a statement of termination signed by the company;

7 (B) For a protected series of a non-surviving company which after the merger will be a
8 relocated protected series:

9 (i) A statement of relocation signed by the non-surviving company which contains the
10 name of the company and the name of the protected series before and after the merger; and

11 (ii) A statement of protected series designation signed by the surviving company; and

12 (C) For a protected series being established by the surviving company as a result of the
13 merger, a protected series designation signed by the company.

§31B-14-607. Effect of merger.

1 When a merger under §31B-14-604 becomes effective, in addition to the effects stated in
2 §31B-9-906 of this code:

3 (1) As provided in the plan of merger, each protected series of each merging company
4 which was established before the merger:

5 (A) Is a relocated protected series or continuing protected series; or

6 (B) Is dissolved, wound up, and terminated;

7 (2) Any protected series to be established as a result of the merger is established;

8 (3) Any relocated protected series or continuing protected series is the same person
9 without interruption as it was before the merger;

10 (4) All property of a relocated protected series or continuing protected series continues to
11 be vested in the protected series without transfer, reversion, or impairment;

12 (5) All debts, obligations, and other liabilities of a relocated protected series or continuing
13 protected series continue as debts, obligations, and other liabilities of the protected series;

14 (6) Except as otherwise provided by law or the plan of merger, all the rights, privileges,
15 immunities, powers, and purposes of a relocated protected series or continuing protected series
16 remain in the protected series;

17 (7) The new name of a relocated protected series may be substituted for the former name
18 of the protected series in any pending action or proceeding;

19 (8) If provided in the plan of merger:

20 (A) A person becomes an associated member or protected-series transferee of a relocated
21 protected series or continuing protected series;

22 (B) A person becomes an associated member of a protected series established by the
23 surviving company as a result of the merger;

24 (C) Any change in the rights or obligations of a person in the person's capacity as an
25 associated member or protected-series transferee of a relocated protected series or continuing
26 protected series take effect; and

27 (D) Any consideration to be paid to a person that before the merger was an associated
28 member or protected-series transferee of a relocated protected series or continuing protected
29 series is due; and

30 (9) Any person that is a member of a relocated protected series becomes a member of
31 the surviving company, if not already a member.

§31B-14-608. Application of §31B-14-404 after merger.

1 (a) A creditor's right that existed under §31B-14-404 of this code immediately before a
2 merger under §31B-14-604 of this code may be enforced after the merger in accordance with the
3 following rules:

4 (1) A creditor's right that existed immediately before the merger against the surviving
5 company, a continuing protected series, or a relocated protected series continues without change
6 after the merger.

7 (2) A creditor's right that existed immediately before the merger against a non-surviving
8 company:

9 (A) May be asserted against an asset of the non-surviving company which vested in the
10 surviving company as a result of the merger; and

11 (B) Does not otherwise change.

12 (3) Subject to subsection (b), the following rules apply:

13 (A) In addition to the remedy stated in paragraph (1) of this section, a creditor with a right
14 under §31B-14-404 which existed immediately before the merger against a non-surviving
15 company or a relocated protected series may assert the right against:

16 (i) An asset of the surviving company, other than an asset of the non-surviving company
17 which vested in the surviving company as a result of the merger;

18 (ii) An asset of a continuing protected series; or

19 (iii) An asset of a protected series established by the surviving company as a result of the
20 merger;

21 (iv) If the creditor's right was against an asset of the non-surviving company, an asset of
22 a relocated series; or

23 (v) If the creditor's right was against an asset of a relocated protected series, an asset of
24 another relocated protected series.

25 (B) In addition to the remedy stated in paragraph (2) of this section, a creditor with a right
26 that existed immediately before the merger against the surviving company or a continuing
27 protected series may assert the right against:

28 (i) An asset of a relocated protected series; or

29 (ii) An asset of a non-surviving company which vested in the surviving company as a result
30 of the merger.

31 (b) For the purposes of subsection (a)(3) of this section and §31B-14-404(b)(1)(A), (2)(A),
32 and (3)(A) of this code, the incurrence date is deemed to be the date on which the merger
33 becomes effective.

34 (c) A merger under §31B-14-604 of this code does not affect the manner in which §31B-
35 14-404 of this code applies to a liability incurred after the merger.

§31B-14-701. Governing law.

1 The law of the jurisdiction of formation of a foreign series limited liability company governs:

2 (1) The internal affairs of a foreign protected series of the company, including:

3 (A) Relations among any associated members of the foreign protected series;

4 (B) Relations between the foreign protected series and:

5 (i) Any associated member;

6 (ii) The protected-series manager; or

7 (iii) Any protected-series transferee;

8 (C) Relations between any associated member and:

9 (i) The protected-series manager;

10 (ii) Any protected-series transferee;

11 (D) The rights and duties of a protected-series manager;

12 (E) Governance decisions affecting the activities and affairs of the foreign protected series

13 and the conduct of those activities and affairs; and

14 (F) Procedures and conditions for becoming an associated member or protected-series
15 transferee;

16 (2) Relations between the foreign protected series and:

17 (A) The company;

18 (B) Another foreign protected series of the company;

19 (C) A member of the company which is not an associated member of the foreign protected
20 series;

21 (D) A foreign protected-series manager that is not a protected-series manager of the
22 protected series;

23 (E) A foreign protected-series transferee that is not a foreign protected-series transferee
24 of the protected series; and

25 (F) A transferee of a distributional interest of the company;

26 (3) Except as otherwise provided in §31B-14-402 of this code and §31B-14-404 of this
27 code, the liability of a person for a debt, obligation, or other liability of a foreign protected series
28 of a foreign series limited liability company if the debt, obligation, or liability is asserted solely by
29 reason of the person being or acting as:

30 (A) An associated member, protected-series transferee, or protected-series manager of
31 the foreign protected series;

32 (B) A member of the company which is not an associated member of the foreign protected
33 series;

34 (C) A protected-series manager of another foreign protected series of the company;

35 (D) A protected-series transferee of another foreign protected series of the company;

36 (E) A manager of the company; or

37 (F) A transferee of a distributional interest of the company; and

38 (4) Except as otherwise provided in §31B-14-402 and §31B-14-404 of this code:

39 (A) The liability of the foreign series limited liability company for a debt, obligation, or other
40 liability of a foreign protected series of the company if the debt, obligation, or liability is asserted
41 solely by reason of the foreign protected series being a foreign protected series of the company
42 or the company:

43 (i) Being or acting as a foreign protected-series manager of the foreign protected series;

44 (ii) Having the foreign protected series manage the company; or

45 (iii) Owning a protected-series distributional interest of the foreign protected series; and

46 (B) The liability of a foreign protected series for a debt, obligation, or other liability of the
47 company or another foreign protected series of the company if the debt, obligation, or liability is
48 asserted solely by reason of the foreign protected series:

49 (i) Being a foreign protected series of the company or having the company or another
50 foreign protected series of the company be or act as foreign protected-series manager of the
51 foreign protected series; or

52 (ii) Managing the company or being or acting as a foreign protected-series manager of
53 another foreign protected series of the company.

§31B-14-702. No attribution of activities constituting doing business or for establishing jurisdiction.

1 In determining whether a foreign series limited liability company or foreign protected series
2 of the company does business in this state or is subject to the personal jurisdiction of the courts
3 of this state:

4 (1) The activities and affairs of the company are not attributable to a foreign protected
5 series of the company solely by reason of the foreign protected series being a foreign protected
6 series of the company; and

7 (2) The activities and affairs of a foreign protected series are not attributable to the
8 company or another foreign protected series of the company solely by reason of the foreign
9 protected series being a foreign protected series of the company.

§31B-14-703. Registration of foreign protected series.

1 (a) Except as otherwise provided in this section and subject to §31B-14-402 and §31B-
2 14-404 of this code, the law of this state governing the registration of a foreign limited liability
3 company to do business in this state, including the consequences of not complying with that law,
4 applies to a foreign protected series of a foreign series limited liability company as if the foreign
5 protected series were a foreign limited liability company formed separately from the foreign series

6 limited liability company and distinct from the foreign series limited liability company and any other
7 foreign protected series of the foreign series limited liability company.

8 (b) An application by a foreign protected series of a foreign series limited liability company
9 for registration to do business in this state must include:

10 (1) The name and jurisdiction of formation of the foreign series limited liability company;
11 and

12 (2) If the company has other foreign protected series, the name and street and mailing
13 address of an individual who knows the name and street and mailing address of:

14 (A) Each other foreign protected series of the foreign series limited liability company; and

15 (B) The foreign protected-series manager of and agent for service of process for each
16 other foreign protected series of the foreign series limited liability company; and

17 (3) Any other information required under §31B-10-1002 of this code for a foreign limited
18 liability company's certificate of authority, including a certificate of existence or a record of similar
19 import.

20 (c) The name of a foreign protected series applying for registration or registered to do
21 business in this state must comply with §31B-14-202 of this code and may do so using a trade
22 name under §47-8-4 of this code if the trade name complies with §31B-14-202 of this code.

23 (d) The requirement in §31B-2-207 of this code to amend a statement of registration to
24 update information applies to the information required by subsection (b) of this section.

**§31B-14-704. Disclosure required when foreign series limited liability company or foreign
protected series party to proceeding.**

1 (a) Not later than 30 days after becoming a party to a proceeding before a civil,
2 administrative, or other adjudicative tribunal of or located in this state or a tribunal of the United
3 States located in this state:

4 (1) A foreign series limited liability company shall disclose to each other party the name
5 and street and mailing address of:

6 (A) Each foreign protected series of the company; and

7 (B) Each foreign protected-series manager of and a registered agent for service of process
8 for each foreign protected series of the company; and

9 (2) A foreign protected series of a foreign series limited liability company shall disclose to
10 each other party the name and street and mailing address of:

11 (A) The company and each manager of the company and an agent for service of process
12 for the company; and

13 (B) Any other foreign protected series of the company and each foreign protected-series
14 manager of and an agent for service of process for the other foreign protected series.

15 (b) If a foreign series limited liability company or foreign protected series challenges the
16 personal jurisdiction of the tribunal, the requirement that the foreign company or foreign protected
17 series make disclosure under subsection (a) of this section is tolled until the tribunal determines
18 whether it has personal jurisdiction.

19 (c) If a foreign series limited liability company or foreign protected series does not comply
20 with subsection (a) of this section, a party to the proceeding may:

21 (1) Request the tribunal to treat the noncompliance as a failure to comply with the tribunal's
22 discovery rules; or

23 (2) Bring a separate proceeding in the court to enforce subsection (a) of this section.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 1. GENERAL PROVISIONS.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

§46-1-201. General definitions.

1 (a) Unless the context otherwise requires, words or phrases defined in this section, or in
2 the additional definitions contained in other articles of this chapter that apply to particular articles
3 or parts thereof, have the meanings stated.

4 (b) Subject to definitions contained in other articles of this chapter that apply to particular
5 articles or parts thereof:

6 (1) "Action", in the sense of a judicial proceeding, includes recoupment, counterclaim, set-
7 off, suit in equity, and any other proceeding in which rights are determined.

8 (2) "Aggrieved party" means a party entitled to pursue a remedy.

9 (3) "Agreement", as distinguished from "contract", means the bargain of the parties in fact,
10 as found in their language or inferred from other circumstances, including course of performance,
11 course of dealing, or usage of trade as provided in section 1-303.

12 (4) "Bank" means a person engaged in the business of banking and includes a savings
13 bank, savings and loan association, credit union, and trust company.

14 (5) "Bearer" means a person in control of a negotiable electronic document of title or a
15 person in possession of a negotiable instrument, document of title, or certificated security that is
16 payable to bearer or indorsed in blank.

17 (6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment
18 issued by a person engaged in the business of directly or indirectly transporting or forwarding
19 goods. The term does not include a warehouse receipt.

20 (7) "Branch" includes a separately incorporated foreign branch of a bank.

21 (8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the
22 existence of the fact is more probable than its nonexistence.

23 (9) "Buyer in ordinary course of business" means a person that buys goods in good faith,
24 without knowledge that the sale violates the rights of another person in the goods, and in the
25 ordinary course from a person, other than a pawnbroker, in the business of selling goods of that
26 kind. A person buys goods in the ordinary course if the sale to the person comports with the usual
27 or customary practices in the kind of business in which the seller is engaged or with the seller's
28 own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead
29 or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course

30 of business may buy for cash, by exchange of other property, or on secured or unsecured credit,
31 and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer
32 that takes possession of the goods or has a right to recover the goods from the seller under article
33 two may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does
34 not include a person that acquires goods in a transfer in bulk or as security for or in total or partial
35 satisfaction of a money debt.

36 (10) "Conspicuous", with reference to a term, means so written, displayed, or presented
37 that a reasonable person against which it is to operate ought to have noticed it. Whether a term
38 is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

39 (A) A heading in capitals equal to or greater in size than the surrounding text, or in
40 contrasting type, font or color to the surrounding text of the same or lesser size; and

41 (B) Language in the body of a record or display in larger type than the surrounding text,
42 or in contrasting type, font, or color to the surrounding text of the same size, or set off from
43 surrounding text of the same size by symbols or other marks that call attention to the language.

44 (11) "Consumer" means an individual who enters into a transaction primarily for personal,
45 family or household purposes.

46 (12) "Contract", as distinguished from "agreement", means the total legal obligation that
47 results from the parties' agreement as determined by this chapter as supplemented by any other
48 applicable laws.

49 (13) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any
50 representative of creditors, including an assignee for the benefit of creditors, a trustee in
51 bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or
52 assignor's estate.

53 (14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-
54 claim or third-party claim.

55 (15) "Delivery", with respect to an electronic document of title means voluntary transfer of
56 control and with respect to an instrument, document of title or chattel paper, means voluntary
57 transfer of possession.

58 (16) "Document of title" means a record: (i) That in the regular course of business or
59 financing is treated as adequately evidencing that the person in possession or control of the record
60 is entitled to receive, control, hold, and dispose of the record and the goods the record covers;
61 and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's
62 possession which are either identified or are fungible portions of an identified mass. The term
63 includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and
64 order for delivery of goods. An electronic document of title means a document of title evidenced
65 by a record consisting of information stored in an electronic medium. A tangible document of title
66 means a document of title evidenced by a record consisting of information that is inscribed on a
67 tangible medium.

68 (17) "Fault" means a default, breach or wrongful act or omission.

69 (18) "Fungible goods" means:

70 (A) Goods of which any unit, by nature or usage of trade, is the equivalent of any other
71 like unit; or

72 (B) Goods that by agreement are treated as equivalent.

73 (19) "Genuine" means free of forgery or counterfeiting.

74 (20) "Good faith", except as otherwise provided in article 5, means honesty in fact and the
75 observance of reasonable commercial standards of fair dealing.

76 (21) "Holder" means:

77 (A) The person in possession of a negotiable instrument that is payable either to bearer
78 or to an identified person that is the person in possession; or

79 (B) The person in possession of a negotiable tangible document of title if the goods are
80 deliverable either to bearer or to the order of the person in possession; or

81 (C) The person in control of the negotiable electronic document of title.

82 (22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other
83 proceeding intended to liquidate or rehabilitate the estate of the person involved.

84 (23) "Insolvent" means:

85 (A) Having generally ceased to pay debts in the ordinary course of business other than as
86 a result of bona fide dispute;

87 (B) Being unable to pay debts as they become due; or

88 (C) Being insolvent within the meaning of federal bankruptcy law.

89 (24) "Money" means a medium of exchange currently authorized or adopted by a domestic
90 or foreign government. The term includes a monetary unit of account established by an
91 intergovernmental organization or by agreement between two or more countries.

92 (25) "Organization" means a person other than an individual.

93 (26) "Party", as distinguished from "third party", means a person that has engaged in a
94 transaction or made an agreement subject to this chapter.

95 (27) "Person" means an individual, corporation, business trust, estate, trust, partnership,
96 limited liability company, series limited liability company, protected series, association, joint
97 venture, government, governmental subdivision, agency, ~~or~~ instrumentality, public corporation, or
98 any other legal or commercial entity.

99 (28) "Present value" means the amount as of a date certain of one or more sums payable
100 in the future, discounted to the date certain by use of either an interest rate specified by the parties
101 if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest
102 rate is not so specified, a commercially reasonable rate that takes into account the facts and
103 circumstances at the time the transaction is entered into.

104 (29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge,
105 lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest
106 in property.

107 (30) "Purchaser" means a person that takes by purchase.

108 (31) "Record" means information that is inscribed on a tangible medium or that is stored
109 in an electronic or other medium and is retrievable in perceivable form.

110 (32) "Remedy" means any remedial right to which an aggrieved party is entitled with or
111 without resort to a tribunal.

112 (33) "Representative" means a person empowered to act for another, including an agent,
113 an officer of a corporation or association, and a trustee, executor or administrator of an estate.

114 (34) "Right" includes remedy.

115 (35) "Security interest" means an interest in personal property or fixtures which secures
116 payment or performance of an obligation. "Security interest" includes any interest of a consignor
117 and a buyer of accounts, chattel paper, a payment intangible or a promissory note in a transaction
118 that is subject to article 9. "Security interest" does not include the special property interest of a
119 buyer of goods on identification of those goods to a contract for sale under section 2-401, but a
120 buyer may also acquire a "security interest" by complying with article 9. Except as otherwise
121 provided in section 2-505, the right of a seller or lessor of goods under article 2 or 2A to retain or
122 acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire
123 a "security interest" by complying with article 9. The retention or reservation of title by a seller of
124 goods notwithstanding shipment or delivery to the buyer under section 2-401 is limited in effect to
125 a reservation of a "security interest". Whether a transaction in the form of a lease creates a
126 "security interest" is determined pursuant to section 1-203.

127 (36) "Send" in connection with a writing, record, or notice means:

128 (A) To deposit in the mail or deliver for transmission by any other usual means of
129 communication with postage or cost of transmission provided for and properly addressed and, in
130 the case of an instrument, to an address specified thereon or otherwise agreed, or if there be
131 none to any address reasonable under the circumstances; or

132 (B) In any other way to cause to be received any record or notice within the time it would
133 have arrived if properly sent.

134 (37) "Signed" includes using any symbol executed or adopted with present intention to
135 adopt or accept a writing.

136 (38) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
137 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
138 United States.

139 (39) "Surety" includes a guarantor or other secondary obligor.

140 (40) "Term" means a portion of an agreement that relates to a particular matter.

141 (41) "Unauthorized signature" means a signature made without actual, implied or apparent
142 authority. The term includes a forgery.

143 (42) "Warehouse receipt" means a document of title issued by a person engaged in the
144 business of storing goods for hire.

145 (43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible
146 form. "Written" has a corresponding meaning.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS;

LEGAL ADVERTISEMENTS.

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, \$100;

9 (B) Articles of incorporation of nonprofit corporation, \$25;

10 (C) Articles of organization of limited liability company, \$100;

11 (D) Agreement of a general partnership, \$50;

12 (E) Certificate of a limited partnership, \$100;

13 (F) Agreement of a voluntary association, \$50;

14 (G) Articles of organization of a business trust, \$50;

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;

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 ~~companies~~ company, series limited liability company, or protected series; or of certificate of limited
20 partnership; or of agreement of voluntary association, \$25;

21 (J) Amendment and restatement of articles of incorporation, certificate of limited
22 partnership, agreement of voluntary association or articles of organization of limited liability
23 partnership, limited liability company, ~~or~~ professional limited liability ~~companies~~ company, series
24 limited liability company, protected series, or business trust, \$25;

25 (K) Registration of trade name, otherwise designated as a true name, fictitious name or
26 D. B. A. (doing business as) name for any domestic business entity as permitted by law, \$25;

27 (L) Articles of merger of two corporations, limited partnerships, limited liability
28 partnerships, limited liability companies, ~~or~~ professional limited liability companies, series limited
29 liability companies, protected series, voluntary associations, or business trusts, \$25;

30 (M) Plus for each additional party to the merger in excess of two, \$15;

31 (N) Statement of conversion, when permitted, from one business entity into another
32 business entity, in addition to the cost of filing the appropriate documents to organize the surviving
33 entity, \$25;

34 (O) Articles of dissolution of a corporation, voluntary association or business trust, or
35 statement of dissolution of a general partnership, \$25;

36 (P) Revocation of voluntary dissolution of a corporation, voluntary association or business
37 trust, \$15;

38 (Q) Articles of termination of a limited liability company, cancellation of a limited
39 partnership or statement of withdrawal of limited liability partnership, \$25;

40 (R) Reinstatement of a limited liability company, ~~or~~ professional limited liability company,
41 a series limited liability company, or protected series after administrative dissolution, \$25.

42 (2) For filing, recording, indexing, preserving a record of and issuing a certificate relating
43 to the registration, amendment, change of name, merger, consolidation, conversion, renewal,
44 withdrawal or termination within this state of business entities organized in other states or
45 countries, as follows:

46 (A) Certificate of authority of for-profit corporation, \$100;

47 (B) Certificate of authority of nonprofit corporation, \$50;

48 (C) Certificate of authority of foreign limited liability companies or foreign protected series
49 limited liability company, \$150;

50 (D) Certificate of exemption from certificate of authority, \$25;

51 (E) Registration of a general partnership, \$50;

52 (F) Registration of a limited partnership, \$150;

53 (G) Registration of a limited liability partnership for two-year term, \$500;

54 (H) Registration of a voluntary association, \$50;

55 (I) Registration of a trust or business trust, \$50;

56 (J) Registration of a series limited liability company, \$25;

57 ~~(J)~~ (K) Amendment or correction of certificate of authority of a foreign corporation,
58 including change of name or increase of capital stock, in addition to any applicable license tax,
59 \$25;

60 ~~(K)~~ (L) Amendment or correction of certificate of limited partnership, limited liability
61 partnership, limited liability company or professional limited liability company, voluntary
62 association or business trust, \$25;

63 ~~(L)~~ (M) Registration of trade name, otherwise designated as a true name, fictitious name
64 or D. B. A. (doing business as) name for any foreign business entity as permitted by law, \$25;

65 ~~(M)~~ (N) Amendment and restatement of certificate of authority or of registration of a
66 corporation, limited partnership, limited liability partnership, limited liability company, or
67 professional limited liability company companies, series limited liability company, protected
68 series, voluntary association, or business trust, \$25;

69 ~~(N)~~ (O) Articles of merger of two corporations, limited partnerships, limited liability
70 partnerships, limited liability companies, or professional limited liability companies, series limited
71 liability companies, voluntary associations or business trusts, \$25;

72 ~~(O)~~ (P) Plus, for each additional party to the merger in excess of two, \$5;

73 ~~(P)~~ (Q) Statement of conversion, when permitted, from one business entity into another
74 business entity, in addition to the cost of filing the appropriate articles or certificate to organize
75 the surviving entity, \$25;

76 ~~(Q)~~ (R) Certificate of withdrawal or cancellation of a corporation, limited partnership,
77 limited liability partnership, limited liability company, voluntary association or business trust, \$25;

78 Notwithstanding any other provision of this section to the contrary, after June 30, 2008,
79 the fees described in this subdivision that are collected for the issuance of a certificate relating to
80 the initial registration of a corporation, limited partnership, domestic limited liability company or
81 foreign limited liability company shall be deposited in the general administrative fees account
82 established by this section.

83 (3) For receiving, filing and recording a change of the principal or designated office,
84 change of the agent of process and/or change of officers, directors, partners, members or
85 managers, as the case may be, of a corporation, limited partnership, limited liability partnership,
86 limited liability company or other business entity as provided by law, \$15.

87 (4) For receiving, filing and preserving a reservation of a name for each 120 days or for
88 any other period in excess of seven days prescribed by law for a corporation, limited partnership,
89 limited liability partnership or limited liability company, \$15.

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

91 (A) Certificate of good standing of a domestic or foreign corporation, \$10;

92 (B) Certificate of existence of a domestic limited liability company, ~~and~~ certificate of
93 authorization foreign limited liability company, certificate of a good standing of domestic or foreign
94 protected series limited liability company, \$10;

95 (C) Certificate of existence of any business entity, trademark or service mark registered
96 with the Secretary of State, \$10;

97 (D) Certified copy of corporate charter or comparable organizing documents for other
98 business entities, \$15;

99 (E) Plus, for each additional amendment, restatement or other additional document, \$5;

100 (F) Certificate of registration of the name of a foreign corporation, limited liability company,
101 limited partnership or limited liability partnership, \$25;

102 (G) And for the annual renewal of the name registration, \$10;

103 (H) Any other certificate not specified in this subdivision, \$10.

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

106 (A) Certificate or apostille relating to the authority of certain public officers, including the
107 membership of boards and commissions, \$10;

108 (B) Plus, for each additional certificate pertaining to the same transaction, \$5;

109 (C) Any other certificate not specified in this subdivision, \$10;

110 (D) For acceptance, indexing and recordation of service of process for any corporation,
111 limited partnership, limited liability partnership, limited liability company, voluntary association,
112 business trust, insurance company, person or other entity as permitted by law, \$15;

113 (E) For shipping and handling expenses for execution of service of process by certified
114 mail upon any defendant within the United States, which fee is to be deposited to the special
115 revenue account established in this section for the operation of the office of the Secretary of State,
116 \$5;

117 (F) For shipping and handling expenses for execution of service of process upon any
118 defendant outside the United States by registered mail, which fee is to be deposited to the special
119 revenue account established in this section for the operation of the office of the Secretary of State,
120 \$15;

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

123 (A) For any search of archival records maintained at sites other than the office of the
124 Secretary of State no less than, \$10;

125 (B) For searches of archival records maintained at sites other than the office of the
126 Secretary of State which require more than one hour, for each hour or fraction of an hour
127 consumed in making a search, \$10;

128 (C) For any search of records maintained on site for the purpose of obtaining copies of
129 documents or printouts of data, \$5;

130 (D) For any search of records maintained in electronic format which requires special
131 programming to be performed by the state information services agency or other vendor any actual
132 cost, but not less than, \$25;

133 (E) The cost of the search is in addition to the cost of any copies or printouts prepared or
134 any certificate issued pursuant to or based on the search;

135 (F) For recording any paper for which no specific fee is prescribed, \$5.

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

138 (A) For a copy of any paper or printout of electronic data, if one sheet, \$1;

139 (B) For each sheet after the first, 50 cents;

140 (C) For sending the copies or lists by fax transmission, \$5;

141 (D) For producing and providing photocopies of lists, reports, guidelines and other
142 documents produced in multiple copies for general public use, a publication price to be
143 established by the Secretary of State at a rate approximating \$2 plus 10 cents per page and
144 rounded to the nearest dollar;

145 (E) For electronic copies of records obtained in data format on disk, the cost of the record
146 in the least expensive available printed format, plus, for each required disk, which shall be
147 provided by the Secretary of State, \$5.

148 (b) The Secretary of State may propose rules for legislative approval, in accordance with
149 the provisions of §29A-3-1 *et seq.* of this code, for charges for online electronic access to
150 database information or other information maintained by the Secretary of State.

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

153 (d) The records maintained by the Secretary of State are prepared and indexed at the
154 expense of the state and those records shall not be obtained for commercial resale without the

155 written agreement of the state to a contract including reimbursement to the state for each instance
156 of resale.

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

160 (f) There is hereby continued in the State Treasury a special revenue account to be known
161 as the Service Fees and Collections Account. Expenditures from the account shall be used for
162 the operation of the office of the Secretary of State and are not authorized from collections, but
163 are to be made only in accordance with appropriation by the Legislature and in accordance with
164 the provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in
165 §5A-2-1 *et seq.* of this code. Notwithstanding any other provision of this code to the contrary,
166 except as provided in subsection (h) of this section and §59-1-2a of this code, one half of all the
167 fees and service charges established in the following sections and for the following purposes shall
168 be deposited by the Secretary of State or other collecting agency to that special revenue account
169 and used for the operation of the office of the Secretary of State:

170 (1) The annual attorney-in-fact fee for corporations and limited partnerships established in
171 §11-12C-5 of this code;

172 (2) The fees received for the sale of the State Register, Code of State Rules, and other
173 copies established by rule and authorized by §29A-2-7 of this code;

174 (3) The registration fees, late fees, and legal settlements charged for registration and
175 enforcement of the charitable organizations and professional solicitations established in §29-19-
176 5, §29-19-9, and §29-19-15b this code;

177 (4) The annual attorney-in-fact fee for limited liability companies as designated in §31B-1-
178 108 of this code and the annual report fee established in §31B-2-211 of this code: *Provided*, That
179 after June 30, 2008, the annual report fees designated in §31B-1-108 of this code shall upon

180 collection, be deposited in the General Administrative Fees Account described in subsection (h)
181 of this section;

182 (5) The filing fees and search and copying fees for uniform commercial code transactions
183 established by §46-9-525 of this code;

184 (6) The annual attorney-in-fact fee for licensed insurers established in §33-4-12 of this
185 code;

186 (7) The fees for the application and record maintenance of all notaries public established
187 by §39-4-20 of this code;

188 (8) The fees for registering credit service organizations as established by §46A-6C-5 of
189 this code;

190 (9) The fees for registering and renewing a West Virginia limited liability partnership as
191 established by §47B-10-1 of this code;

192 (10) The filing fees for the registration and renewal of trademarks and service marks
193 established in §47-2-17 of this code;

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

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

198 (g) Any balance in the service fees and collections account established by this section
199 which exceeds \$500,000 as of June 30, 2003, and each year thereafter, shall be expired to the
200 state fund, General Revenue Fund.

201 (h)(1) Effective July 1, 2008, there is hereby created in the State Treasury a special
202 revenue account to be known as the General Administrative Fees Account. Expenditures from
203 the account shall be used for the operation of the office of the Secretary of State and are not
204 authorized from collections, but are to be made only in accordance with appropriation by the
205 Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon the

206 fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code: *Provided*, That for the fiscal
207 year ending June 30, 2009, expenditures are authorized from collections rather than pursuant to
208 an appropriation by the Legislature. Any balance in the account at the end of each fiscal year
209 shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as
210 provided by this subsection.

211 (2) After June 30, 2008, all the fees and service charges established in §59-1-2a of this
212 code for the following purposes shall be collected and deposited by the Secretary of State or other
213 collecting agency in the general administrative fees account and used for the operation of the
214 office of the Secretary of State:

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

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

220 (C) The fees for the purchase of data and updates related to the state's Business
221 Organizations Database described in §59-1-2a of this code.

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

232 (j) A veteran-owned business, as defined in §59-1-2a(a)(13), commenced on or after July
233 1, 2015, or an active-duty member business, as defined in §59-1-2a(a)(13), commenced on or
234 after July 1, 2021, is exempt from paying the fees prescribed in paragraphs (a)(1)(A), (a)(1)(B),
235 (a)(1)(C), (a)(1)(D), (a)(1)(E), (a)(1)(F), and(a)(1)(G) of this section.

236 (k) Notwithstanding any other provisions of this article, after July 1, 2017, the Secretary of
237 State may offer a fee for expedited services which shall not exceed \$500.

238 (l) The fees provided for in this section shall remain in effect until such time as the
239 Legislature has approved rules promulgated by the Secretary of State, in accordance with the
240 provisions of §29A-3-1 *et seq.* of this code, establishing a schedule of fees for services.

**§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 "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 "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 "Corporation" means a "domestic corporation", a "foreign corporation", or a "nonprofit
15 corporation".

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

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

27 "Foreign protected series" has the same meaning assigned in §31B-14-102 of this code.

28 "Foreign series limited liability" has the same meaning assigned in §31B-14-102 of this
29 code.

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

31 "Nonprofit corporation" means a nonprofit corporation as defined by §31E-1-150 of this
32 code.

33 "Protected series" has the same meaning assigned in §31B-14-102 of this code.

34 "Registration fee" means the fee for the issuance of a certificate relating to the initial
35 registration of a corporation, limited partnership, domestic limited liability company, ~~or~~ foreign
36 limited liability company, domestic protected series, or foreign protected series described in §59-
37 1-2(a)(2) of this code. The term "initial registration" also means the date upon which the
38 registration fee is paid.

39 "Series limited liability company" has the same meaning assigned in §31B-14-102 of this
40 code.

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

45 "Veteran-owned business" or "active-duty member-owned business" means a business
46 that meets the following criteria:

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

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

52 (b) Required payment of annual report fee and filing of annual report. — After June 30,
53 2008, no corporation, limited partnership, domestic limited liability company, or foreign limited
54 liability company may engage in any business activity in this state without paying the annual report
55 fee and filing the annual report as required by this section.

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

67 2008, on or before the dates specified in subsection (e) of this section. The annual report fees
68 received by the Secretary of State pursuant to this subsection shall be deposited by the Secretary
69 of State in the general administrative fees account established by §59-1-2 of this code.

70 (d) Annual report. —

71 (1) After June 30, 2008, each corporation, limited partnership, domestic limited liability
72 company, and foreign limited liability company engaged in or authorized to do business in this
73 state shall file an annual report. The report is due each year after the initial registration of the
74 corporation, limited partnership, domestic limited liability company, or foreign limited liability
75 company with the annual report fee described in subsection (c) of this section on or before the
76 dates specified in subsection (e) of this section. The report is due each year from corporations,
77 limited partnerships, domestic limited liability companies, and foreign limited liability companies
78 that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection
79 (e) of this section.

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

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

102 (e) Annual reports and fees due by June 30. — Each domestic and foreign corporation,
103 limited partnership, limited liability company, and foreign limited liability company shall file with
104 the Secretary of State the annual report and pay the annual report fee on or before 11:59 PM on
105 June 30 of each year.

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

109 (g)(1) Duty to pay. — It is the duty of each corporation, limited partnership, limited liability
110 company, and foreign limited liability company required to pay the annual report fees imposed
111 under this article to remit them with a properly completed annual report to the Secretary of State,
112 and if it fails to do so it is subject to the late fees prescribed in subsection (h) of this section and
113 dissolution or revocation, pursuant to this code: *Provided*, That before dissolution or revocation
114 for failure to pay fees may occur, the Secretary of State shall notify the entity by certified mail,
115 return receipt requested, of its failure to pay, all late fees or bad check fees associated with the
116 failure to pay, and the date upon which dissolution or revocation will occur if all fees are not paid

117 in full. The certified mail required by this subdivision shall be postmarked at least 30 days before
118 the dissolution or revocation date listed in the notice.

119 (2) Bad check fee. — If any corporation, limited partnership, limited liability company, or
120 foreign limited liability company submits payment by check or money order for the annual report
121 fee imposed under this article and the check or money order is rejected because there are
122 insufficient funds in the account, an invalid account number is provided, or the account is closed,
123 the Secretary of State shall assess a bad check fee to the corporation, limited partnership, limited
124 liability company, or foreign limited liability company that is equivalent to the service charge paid
125 by the Secretary of State due to the rejected check or money order. The bad check fee assessed
126 under this subdivision shall be deposited into the account or accounts from which the Secretary
127 of State paid the service charge.

128 (h) Late fees. —

129 (1) The following late fees are in addition to any other penalties and remedies available
130 elsewhere in this code:

131 (A) Administrative late fee. — The Secretary of State shall assess upon each corporation,
132 limited partnership, limited liability company, and foreign limited liability company delinquent in
133 the payment of an annual report fee or the filing of an annual report an administrative late fee in
134 the amount of \$50.

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

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

142 (i) Reports to Tax Commissioner; suspension, cancellation, or withholding of business
143 registration certificate. —

144 (1) The Secretary of State shall, within 20 days after the close of each month, make a
145 report to the Tax Commissioner for the preceding month, in which he or she shall set out the
146 name of every business entity to which he or she issued a certificate to conduct business in the
147 State of West Virginia during that month. The report shall set out the names and addresses of all
148 corporations, limited partnerships, limited liability companies, and foreign limited liability
149 companies to which he or she issued certificates of change of name or of change of location of
150 principal office, dissolution, withdrawal, or merger. If the Secretary of State fails to make the
151 report, it is the duty of the Tax Commissioner to report such failure to the Governor. A writ of
152 mandamus lies for correction of such failure.

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

162 (j) Purchase of data. — The Secretary of State shall provide electronically, for purchase,
163 any data maintained in the Secretary of State's Business Organizations Database. For the
164 electronic purchase of the entire Business Organizations Database, the cost is \$12,000. For the
165 purchase of the monthly updates of the Business Organizations Database, the cost is \$1,000 per
166 month. The fees received by the Secretary of State pursuant to this subsection shall be deposited

167 by the Secretary of State in the general administrative fees account established by §59-1-2 of this
168 code.

169 (k) The Secretary of State may collect the service fee per transaction, if any, charged for
170 an online service from any customer who purchases data or conducts transactions through an
171 online service.

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

174 (m) A veteran-owned business, as defined in this section, commenced on or after July 1,
175 2015, or an active-duty member-owned business, as defined in this section, commenced on or
176 after July 1, 2021, is exempt from paying the annual report fee, required by this section, for the
177 first four years after its initial registration: *Provided*, That a veteran-owned business or an active-
178 duty member-owned business is not exempt from any filing deadlines or other fees required by
179 this section.

180 (n) The Secretary of State may waive new business registration fees at up to three
181 entrepreneurship events or conferences within the State of West Virginia.

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

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

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

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

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

201 (q) Any person harmed as a result of a violation of subsection (o) of this section may
202 recover damages in an amount equal to three times the amount solicited, any associated court
203 costs and attorneys' fees, and any other damages, at the discretion of the court.