

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Senate Bill 142

By Senators Woodrum, Clements, Deeds, Nelson,
Oliverio, Phillips, Rucker, Swope, Tarr, Hamilton, and
Jeffries

[Passed March 7, 2024; in effect 90 days from
passage]

1 AN ACT to amend and reenact §59-1-2a of the Code of West Virginia, 1931, as amended, relating
2 to clarifying the deadline to file an annual report for corporations, limited partnerships,
3 domestic limited liability partnerships, and foreign limited liability companies engaged or
4 authorized to do business in West Virginia; and requiring certain disclosures from
5 nongovernmental entities who solicit the purchase of, or payment for, a product or service
6 from businesses with which they do not have a pre-existing commercial relationship for
7 annual report filing by means of a mailing, electronic mail, or facsimile.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. FEES AND ALLOWANCES.

**§59-1-2a. Annual business fees to be paid to the Secretary of State; filing of annual reports;
purchase of data.**

1 (a) *Definitions.* — As used in this section:

2 "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".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Annual report.* —

(1) After June 30, 2008, each corporation, limited partnership, domestic limited liability company, and foreign limited liability company engaged in or authorized to do business in this state shall file an annual report. The report is due each year after the initial registration of the corporation, limited partnership, domestic limited liability company, or foreign limited liability

company with the annual report fee described in subsection (c) of this section on or before the dates specified in subsection (e) of this section. The report is due each year from corporations, limited partnerships, domestic limited liability companies, and foreign limited liability companies that paid the registration fee prior to July 1, 2008, on or before the dates specified in subsection (e) of this section.

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

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

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

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

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

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

(h) *Late fees.* —

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

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

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

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

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

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

(2) Notwithstanding any other provision of this code to the contrary, upon receipt of notice

from the Secretary of State that a corporation, limited partnership, limited liability company, and foreign limited liability company is more than 30 days delinquent in the payment of annual report fees or in the filing of an annual report required by this section, the Tax Commissioner may suspend, cancel, or withhold a business registration certificate issued to or applied for by the delinquent corporation, limited partnership, limited liability company, or foreign limited liability company until the same is paid and filed in the manner provided for the suspension, cancellation, or withholding of business registration certificates for other reasons under §11-12-1 *et seq.* of this code.

(j) *Purchase of data.* — The Secretary of State shall provide electronically, for purchase, any data maintained in the Secretary of State's Business Organizations Database. For the electronic purchase of the entire Business Organizations Database, the cost is \$12,000. For the purchase of the monthly updates of the Business Organizations Database, the cost is \$1,000 per month. The fees received by the Secretary of State pursuant to this subsection shall be deposited by the Secretary of State in the general administrative fees account established by §59-1-2 of this code.

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

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

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

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

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

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

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

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

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

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