WEST VIRGINIA CODE: §59-1-2a

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

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

"Annual report fee" means the fee described in subsection (c) of this section that is to be paid to the Secretary of State each year by corporations, limited partnerships, domestic limited liability companies, and foreign limited liability companies. Any reference in this code to a fee paid to the Secretary of State for services as a statutory attorney in fact shall mean the annual report fee described in this section.

"Biennial report fee" means the biennial fee described in subsection (c) of this section that is to be paid to the Secretary of State every two years by corporations, limited partnerships, domestic limited liability companies, and foreign limited liability companies.

"Business activity" means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, but does not mean any of the activities of foreign corporations enumerated in §31D-15-1501(b) of this code, except for the activity of conducting affairs in interstate commerce when activity occurs in this state, nor does it mean any of the activities of foreign limited liability companies enumerated in §31B-10-1003(a) of this code, except for the activity of conducting affairs in interstate commerce when activity occurs in this state.

"Corporation" means a "domestic corporation", a "foreign corporation", or a "nonprofit 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.

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

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

"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.

“Protected series” has the same meaning assigned in §31B-14-102 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, domestic protected series, or foreign protected series 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.

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

"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:

(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 or biennial report fee and filing of annual or biennial report. — After, July 1, 2026, a corporation, limited partnership, domestic limited liability company, or foreign limited liability company may not engage in any business activity in this state without paying the annual or biennial report fee and filing the annual or biennial report as required by this section.

(c) Annual or biennial report fee. — After July 1, 2026, 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 any other administrative services imposed by law upon the Secretary of State. If a corporation, limited partnership, domestic limited liability company, or foreign limited liability company elects for biennial reporting under subdivision (d)(3) of this section, then the corporation, limited partnership, domestic limited liability company, or foreign limited liability company shall pay

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a biennial report fee of $50 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 any other administrative services imposed by law upon the Secretary of State. The fee is due and payable with the annual or biennial report described in subsection (d) of this section on or before the dates specified in subsection (e) of this section. The annual and biennial 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 or biennial report. —

(1) After July 1, 2026, 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 or biennial report. The report is due annually or biennially, subject to the other provisions of this code, after the initial registration of the corporation, limited partnership, domestic limited liability company, or foreign limited liability company with the annual or biennial report fee described in subsection (c) of this section on or before the dates specified in subsection (e) of this section.

(2) The annual or biennial report shall be filed with the Secretary of State on forms provided by the Secretary of State for that purpose.

(A) The annual or biennial 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) the county or county code in which the principal office address or mailing address of the company is located;

(vi) business class code;

(vii) an e-mail address where informational notices and reminders of annual or biennial filings may be sent, unless there is a technical inability to comply; and

(viii) any other information the Secretary of State considers appropriate.

Limited partnerships, domestic limited liability companies, and foreign limited liability companies shall provide similar information with respect to their principal or controlling interests as determined by the Secretary of State or otherwise required by law to be

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reported to the Secretary of State.

(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.

(3) Notwithstanding any provision of this section to the contrary, any corporation, limited partnership, domestic limited liability company, or foreign limited liability company authorized to do business in this state may elect to file a biennial report in lieu of an annual report if the corporation, limited partnership, domestic limited liability company, or foreign limited liability company has timely filed all required annual reports under this section for five consecutive calendar years and is in good standing with the Secretary of State at the time of election. The election shall meet the following requirements:

(A) The election shall be made at the time of filing the fifth consecutive timely annual report, or, for any corporation, limited partnership, domestic limited liability company, or foreign limited liability company that has already satisfied the five-year timely filing requirement as of the effective date of this subsection, at any time between January 1 and July 1 of the next calendar year following the effective date of this subsection in a form and manner prescribed by the Secretary of State;

(B) Upon making the biennial reporting election, the corporation, limited partnership, domestic limited liability company, or foreign limited liability company is not required to file an annual report for the next calendar year. The first biennial report shall be delivered to the Secretary of State between January 1 and July 1 of the second calendar year following the calendar year in which the election is made, and every two years thereafter;

(C) Biennial reports shall include the same information as the annual reports outlined in

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subdivision (2) of this subsection and shall be delivered in a form and manner prescribed by the Secretary of State. If a biennial report does not contain the information required in subdivision (2) of this subsection, the Secretary of State shall promptly notify the reporting corporation, limited partnership, domestic limited liability company, or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subdivision (2) of this subsection and delivered to the Secretary of State within 60 days after the effective date of the notice, it is timely filed;

(D) After election of biennial reporting, if a corporation, limited partnership, domestic limited liability company, or foreign limited liability company fails to timely file a biennial report or loses good standing with the Secretary of State's office, the option to file biennially may be revoked by the Secretary of State, and the corporation, limited partnership, domestic limited liability company, or foreign limited liability company must timely file annual reports for another five consecutive calendar years before making the election again; and

(E) Amendments to this section concerning the election of biennial reporting enacted into law during the Regular Legislative Session of the year 2026, shall take effect on July 1, 2026, and shall not forgive prior failures to file annual reports or pay annual fees previously due.

(e) Annual or biennial 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 or biennial report and pay the annual or biennial report fee on or before 11:59 PM on June 30 of each year or every two years if an election for biennial reporting under subdivision (d)(3) of this section is properly made.

(f) Deposit of fees. — The annual and biennial 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. —Each corporation, limited partnership, limited liability company, and foreign limited liability company shall pay the annual or biennial report fees imposed under this article to remit them with a properly completed annual or biennial 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 or biennial report fee imposed under this article and the check, money order, or automatic

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bank transfer is rejected or declined because there are insufficient funds in the account, an invalid account number is provided, the account is closed, or for any other reason, the Secretary of State shall assess a bad check fee to the corporation, limited partnership, limited liability company, or foreign limited liability company not exceeding an amount equal to $5 plus any amount passed on from a financial institution on a drawer or endorser. 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 or biennial report fee or the filing of an annual or biennial report an administrative late fee in the amount of $50 for an annual delinquency and $100 for a biennial delinquency.

(B) Administrative late fees for nonprofit corporations. — The Secretary of State shall assess each nonprofit corporation delinquent in the payment of an annual or biennial report fee or the filing of an annual or biennial report an administrative late fee in the amount of $25 for an annual delinquency and $50 for a biennial delinquency.

(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.

(3) With respect to any fees collected under this section, the Secretary of State may waive or reduce an administrative late fee if the delinquency in the payment of an annual or biennial report fee or the filing of an annual or biennial report is determined by the Secretary of State to have been caused by circumstances beyond the control of the filer or the filer's agent. In determining whether to waive or reduce the late fee, the Secretary of State may consider:

(A) The history of compliance and timely payment and filing including, but not limited to, previous waiver requests, late filings, and late payments;

(B) The weight and sufficiency of the evidence supporting the request to waive or reduce the late fee for the late filing or payment;

(C) Any evidence which shows that the late payment or late filing was caused by circumstances that were not directly related to the actions of the filer or the filer's agent; and

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(D) Any other factor considered by the Secretary of 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, the Tax Commissioner shall report the failure to the Governor. A writ of mandamus lies for correction of the 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 or biennial report fees or in the filing of an annual or biennial report required by this section, or if a corporation, limited partnership, limited liability company, or foreign limited liability company which elected for biennial reporting under subdivision (d)(3) of this section is more than 60 days delinquent in the payment of biennial report fees or in the filing of a biennial 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,

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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. No later than July 1, 2026, the Secretary of State shall develop and design an official veteran-owned business logotype to be used by a veteran-owned business.

(1) The logotype shall not include any language that may be construed as an endorsement by the State and shall only indicate that the business is a veteran-owned business.

(2) No later than 90 days after the effective date of this subsection, the Secretary of State shall develop an application for which a veteran-owned business may apply to use the logotype.

(3) The Secretary of State shall develop guidelines with the criteria to establish veteran-owned status of businesses applying for the logotype.

(4) The Secretary of State may provide a space on the application where an applicant may voluntarily make a contribution of any amount to be deposited into the West Virginia Veterans' Home Loan Mortgage Fund.

(5) No later than 60 days after the creation of a logotype under this subsection, the Secretary of State shall post a notice that:

(A) The logotype under this subsection is available for use by an approved veteran-owned business; and

(B) Includes instructions on how to complete and submit an application.

(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

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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". If a biennial report election has been made under subdivision (d)(3) of this section, then the following disclosure in 12-point bold font: "Biennial Report filings may be filed directly with the Secretary of State for the statutory $50 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.

(r) Amendments to this section enacted into law during the Regular Legislative Session of the year 2026, shall take effect on July 1, 2026, and shall not forgive prior failures to file annual reports or pay annual fees previously due.

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