WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 2553

(By Delegate(s) Morgan, Stephens, Diserio, Jones, Paxton, M. Smith, Staggers, Hartman and Lynch)

Passed April 9, 2013

In effect ninety days from passage.
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COMMITTEE SUBSTITUTE
for
H. B. 2553

(BY DELEGATE(S) MORGAN, STEPHENS, DISERIO, JONES, PAXTON, M. SMITH, STAGGERS, HARTMAN AND LYNCH)

[Passed April 9, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §31B-8-809 of the Code of West Virginia, 1931, as amended; to amend and reenact §31B-10-1006 of said code; to amend and reenact §31D-14-1420 of said code; to amend and reenact §31D-15-1530 of said code; to amend and reenact §31E-13-1320 of said code; to amend and reenact §31E-14-1430 of said code; and to amend and reenact §59-1-2a of said code, all relating to the authority to conduct business in the state; authorizing the Secretary of State to administratively
dissolve or revoke the certificate of authority of certain business
entities; authorizing dissolution or revocation if certain business
entities fail to pay fees imposed by law; requiring notice to a
business entity by certified mail before dissolution or revocation
due to failure to pay fees; permitting a bad check fee if certain
payment by check or money order is rejected for certain reasons;
authorizing dissolution or revocation if one or more professional
licenses have been revoked and the license is or licenses are
necessary for the continued operation of the business entity; and
authorizing dissolution or revocation if the business entity is in
default with the Bureau of Employment Programs.

Be it enacted by the Legislature of West Virginia:

That §31B-8-809 of the Code of West Virginia, 1931, as amended,
be amended and reenacted; that §31B-10-1006 of said code be
amended and reenacted; that §31D-14-1420 of said code be amended
and reenacted; that §31D-15-1530 of said code be amended and
reenacted; that §31E-13-1320 of said code be amended and reenacted;
that §31E-14-1430 of said code be amended and reenacted; and that
§59-1-2a of said code be amended and reenacted, all to read as follows:

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 8. WINDING UP COMPANY'S BUSINESS.

§31B-8-809. Grounds for administrative dissolution.

1 The Secretary of State may commence a proceeding to
2 administratively dissolve a limited liability company if:

3 (1) The company fails to pay any fees, taxes or penalties
4 imposed by this chapter or other law within sixty days after they
5 are due;

6 (2) The company fails to deliver its annual report to the
7 Secretary of State within sixty days after it is due;
(3) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the company; or

(4) The company is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.

ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

§31B-10-1006. Revocation and reinstatement of certificate of authority.

(a) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the Secretary of State in the manner provided in subsection (b) of this section if:

(1) The company fails to:

(i) Pay any fees, taxes and penalties owed to this state;

(ii) Deliver its annual report required under section 2-211 to the Secretary of State within sixty days after it is due; or

(iii) File a statement of a change in the name or business address of the agent as required by this article;

(2) A misrepresentation has been made of any material matter in any application, report, affidavit or other record submitted by the company pursuant to this article;

(3) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the company; or
(4) The company is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.

(b) The Secretary of State may not revoke a certificate of authority of a foreign limited liability company unless the Secretary of State sends the company notice of the revocation, at least sixty days before its effective date, by a record addressed to its principal office. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in this state ceases on the effective date of the revocation unless the foreign limited liability company cures the failure before that date.

c) A foreign limited liability company administratively revoked may apply to the Secretary of State for reinstatement within two years after the effective date of revocation. The application must:

(1) Recite the name of the company and the effective date of its administrative revocation; (2) state that the ground for revocation either did not exist or has been eliminated; (3) state that the company's name satisfies the requirements of section 10-1005; and (4) contain a certificate from the Tax Commissioner reciting that all taxes owed by the company have been paid.

d) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate and serve the company with a copy of the certificate.

e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revoca-
CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 14. DISSOLUTION.

PART II. ADMINISTRATIVE DISSOLUTION.

§31D-14-1420. Grounds for administrative dissolution.

The Secretary of State may commence a proceeding under section one thousand four hundred twenty-one of this article to administratively dissolve a corporation if:

1. The corporation does not pay within sixty days after they are due any fees, franchise taxes or penalties imposed by this chapter or other law;

2. The corporation does not notify the Secretary of State within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued;

3. The corporation's period of duration stated in its articles of incorporation expires;

4. The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the corporation; or

5. The corporation is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.
ARTICLE 15. FOREIGN CORPORATIONS.

PART III. REVOCATION OF CERTIFICATE OF AUTHORITY.


The Secretary of State may commence a proceeding under section one thousand five hundred thirty-one of this article to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

1. The foreign corporation does not pay within sixty days after they are due any fees, franchise taxes or penalties imposed by this chapter or other law;

2. The foreign corporation does not inform the Secretary of State under section one thousand five hundred eight or one thousand five hundred nine of this article that its registered agent or registered office has changed, that its registered agent has resigned or that its registered office has been discontinued within sixty days of the change, resignation or discontinuance;

3. An incorporator, director, officer or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

4. The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger;

5. The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the foreign corporation; or
CHAPTER 31E. WEST VIRGINIA
NONPROFIT CORPORATION ACT.

ARTICLE 13. DISSOLUTION.

PART II. ADMINISTRATIVE DISSOLUTION.

§31E-13-1320. Grounds for administrative dissolution.

The Secretary of State may commence a proceeding under section one thousand three hundred twenty-one of this article to administratively dissolve a corporation if:

1. The corporation does not pay within sixty days after they are due any fees, franchise taxes or penalties imposed by this chapter or other law;

2. The corporation does not notify the Secretary of State within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued;

3. The corporation's period of duration stated in its articles of incorporation expires;

4. The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the nonprofit entity; or

5. The corporation is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.
ARTICLE 14. FOREIGN CORPORATIONS.

PART III. REVOCATION OF CERTIFICATE OF AUTHORITY.

§31E-14-1430. Grounds for revocation.

The Secretary of State may commence a proceeding under section one thousand four hundred thirty-one of this article to revoke the certificate of authority of a foreign corporation authorized to conduct activities in this state if:

1. The foreign corporation does not pay within sixty days after they are due any fees, franchise taxes or penalties imposed by this chapter or other law;

2. The foreign corporation does not inform the Secretary of State under sections one thousand four hundred eight or one thousand four hundred nine of this article that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation or discontinuance;

3. An incorporator, director, officer or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

4. The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger;

5. The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the corporation; or
(6) The foreign corporation is in default with the Bureau of Employment Programs as provided in section six, article two, chapter twenty-one-a of this code.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

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

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

2 (1) “Annual report fee” means the fee described in subsection (c) of this section that is to be paid to the Secretary of State each year by corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies. After June 30, 2008, 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.

3 (2) “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 subsection (b), section one thousand five hundred one, article fifteen, chapter thirty-one-d 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 subsection (a), section one thousand three, article ten, chapter thirty-one-b of this code except for the activity of conducting affairs in interstate commerce when activity occurs in this state.

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

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(4) "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.

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

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

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

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

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

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

(11) "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 subdivision (2), subsection (a), section two of this article. The term "initial registration" also means the date upon which the registration fee is paid.

(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 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 section two of this article.

(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 July 1. — 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 by July 1 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 section two, article one, chapter fifty-nine of this code.

(g) (1) Duty to pay. — It shall be 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 shall be subject to the late fees prescribed in subsection (h) of this article 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 thirty 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 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 shall be 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 subsection (h), section two of this article, 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 twenty 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 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 shall be the duty of the Tax Commissioner to report such failure to the Governor. A writ of mandamus shall lie for correction of such failure.

(2) Notwithstanding any other provisions 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 thirty 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 article twelve, chapter eleven of this code.

(j) Purchase of data. — The Secretary of State will 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 section two, article one, chapter fifty-nine of this code.

(k) The Secretary of State is authorized to 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 legislative rules for promulgation pursuant to article three, chapter twenty-
nine-a of this code to implement this article, and may, pending promulgation of those rules, promulgate emergency rules pursuant to those provisions for those purposes.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 22nd day of April, 2013.

Governor
PRESENTED TO THE GOVERNOR

APR 17 2013

Time 11:24 am