

HB 2554

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2554

(By Delegate(s) Morgan, Stephens, Staggers,
Hartman, Jones, Diserio and Lynch)



Passed April 12, 2013

In effect ninety days from passage.

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OFFICE OF THE CLERK
SECRETARY OF STATE

E N R O L L E D

COMMITTEE SUBSTITUTE

for

H. B. 2554

(BY DELEGATE(S) MORGAN, STEPHENS, STAGGERS, HARTMAN,
JONES, DISERIO AND LYNCH)

[Passed April 12, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §31D-15-1532 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §31D-15-1533; to amend and reenact §31E-14-1432 of said code; to amend said code by adding thereto a new section, designated §31E-14-1533; and to amend and reenact §59-1-2 of said code, all relating to providing a procedure for the Secretary of State to reinstate certificates of authority for foreign corporations after an administrative revocation; providing for contents of application; providing for effective date of reinstate-

ment; providing for appeal from denial of reinstatement; providing that reinstatement fee is the same for foreign and domestic limited liability companies and foreign and domestic corporations; and establishing a fee for additional parties to a merger when filing articles of merger.

Be it enacted by the Legislature of West Virginia:

That §31D-15-1532 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §31D-15-1533; that §31E-14-1432 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §31E-14-1533; and that §59-1-2 of said code be amended and reenacted, all to read as follows:

**CHAPTER 31D. WEST VIRGINIA
BUSINESS CORPORATION ACT.**

ARTICLE 15. FOREIGN CORPORATIONS.

§31D-15-1532. Reinstatement following administrative revocation.

1 (a) A corporation that has had its certificate of authority
2 administratively revoked under section one thousand five
3 hundred thirty-one of this article may apply to the Secretary of
4 State for reinstatement within two years after the effective date
5 of revocation. The application must:

6 (1) Recite the name of the corporation and the effective date
7 of the administrative revocation;

8 (2) Demonstrate that the ground or grounds for revocation
9 have been eliminated;

10 (3) Demonstrate that the corporation's name satisfies the
11 requirements of section one thousand five hundred six, article
12 fifteen of this chapter; and

13 (4) Obtain a certificate from the Tax Commissioner reciting
14 that all taxes owed by the corporation have been paid.

15 (b) If the Secretary of State determines that the application
16 contains the information required by subsection (a) of this
17 section and that the information is accurate, the Secretary of
18 State shall cancel the Certificate of Revocation and prepare a
19 Certificate of Reinstatement that recites the Secretary of State's
20 determination and the effective date of reinstatement. The
21 Secretary of State shall send notice of the reinstatement to the
22 corporation within thirty days of the determination.

23 (c) When a reinstatement is granted, the reinstatement relates
24 back to and takes effect as of the effective date of the administra-
25 tive revocation and the corporation resumes its business as if the
26 administrative revocation had never occurred.

§31D-15-1533. Appeal from denial of reinstatement.

2 (a) If the Secretary of State denies a corporation's applica-
3 tion for reinstatement following administrative revocation, the
4 Secretary of State shall notify the corporation within thirty days
5 of application by written notice that explains the reason or
6 reasons for denial.

7 (b) The corporation may appeal the denial of reinstatement
8 to the circuit court of Kanawha County within thirty days after
9 service of the notice of denial.

10 (c) The corporation may appeal by petitioning the circuit
11 court of Kanawha County to set aside the revocation and
12 attaching to the petition copies of the Secretary of State's
13 Certificate of Revocation, the corporation's application for
14 reinstatement and the Secretary of State's notice of denial.

15 (d) The circuit court's final decision may be appealed to the
16 West Virginia Supreme Court of Appeals in accordance with
17 article six, chapter twenty-nine-a of this code.

**CHAPTER 31E. WEST VIRGINIA
NONPROFIT CORPORATION ACT.**

ARTICLE 14. FOREIGN CORPORATIONS.

§31E-14-1432. Reinstatement following administrative revocation.

1 (a) A corporation that has had its certificate of authority
2 administratively revoked under section one thousand four
3 hundred thirty-one of this article may apply to the Secretary of
4 State for reinstatement within two years after the effective date
5 of revocation. The application must:

6 (1) Recite the name of the corporation and the effective date
7 of the administrative revocation;

8 (2) Demonstrate that the ground or grounds for revocation
9 have been eliminated;

10 (3) Demonstrate that the corporation's name satisfies the
11 requirements of section one thousand four hundred six, article
12 fifteen of this chapter; and

13 (4) Obtain a certificate from the Tax Commissioner reciting
14 that all taxes owed by the corporation have been paid.

15 (b) If the Secretary of State determines that the application
16 contains the information required by subsection (a) of this
17 section and that the information is accurate, the Secretary of
18 State shall cancel the Certificate of Revocation and prepare a
19 Certificate of Reinstatement that recites the Secretary of State's
20 determination and the effective date of reinstatement. The
21 Secretary of State shall send notice of the reinstatement to the
22 corporation within thirty days of the determination.

23 (c) When a reinstatement is granted, the reinstatement relates
24 back to and takes effect as of the effective date of the administra-
25 tive revocation and the corporation resumes its business as if the
26 administrative revocation had never occurred.

§31E-14-1533. Appeal from denial of reinstatement.

1 (a) If the Secretary of State denies a corporation's applica-
2 tion for reinstatement following administrative revocation, the
3 Secretary of State shall notify the corporation within thirty days
4 of application by written notice that explains the reason or
5 reasons for denial.

6 (b) The corporation may appeal the denial of reinstatement
7 to the circuit court of Kanawha County within thirty days after
8 service of the notice of denial.

9 (c) The corporation may appeal by petitioning the circuit
10 court of Kanawha County to set aside the revocation and
11 attaching to the petition copies of the Secretary of State's
12 Certificate of Revocation, the corporation's application for
13 reinstatement and the Secretary of State's notice of denial.

14 (d) The circuit court's final decision may be appealed to the
15 West Virginia Supreme Court of Appeals in accordance with
16 article six, chapter twenty-nine-a of this code.

**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
2 Secretary of State shall charge for services rendered in his or her
3 office the following fees to be paid by the person to whom the
4 service is rendered at the time it is done:

5 (1) For filing, recording, indexing, preserving a record of
6 and issuing a certificate relating to the formation, amendment,
7 change of name, registration of trade name, merger, consolida-
8 tion, conversion, renewal, dissolution, termination, cancellation,

9 withdrawal revocation and reinstatement of business entities
10 organized within the state, as follows:

11 (A) Articles of incorporation of for-profit corporation, \$50;

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

13 (C) Articles of organization of limited liability company,
14 \$100;

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

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

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

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

19 (H) Amendment or correction of articles of incorporation,
20 including change of name or increase of capital stock, in addition
21 to any applicable license tax, \$25;

22 (I) Amendment or correction, including change of name, of
23 articles of organization of business trust, limited liability
24 partnership, limited liability company or professional limited
25 liability company or of certificate of limited partnership or
26 agreement of voluntary association, \$25;

27 (J) Amendment and restatement of articles of incorporation,
28 certificate of limited partnership, agreement of voluntary
29 association or articles of organization of limited liability
30 partnership, limited liability company or professional limited
31 liability company or business trust, \$25;

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

35 (L) Articles of merger of two corporations, limited partner-
36 ships, limited liability partnerships, limited liability companies
37 or professional limited liability companies, voluntary associa-
38 tions or business trusts, \$25, and for each additional party to the
39 merger in excess of two, \$5;

40 (M) Statement of conversion, when permitted, from one
41 business entity into another business entity, in addition to the
42 cost of filing the appropriate documents to organize the surviv-
43 ing entity, \$25;

44 (N) Articles of dissolution of a corporation, voluntary
45 association or business trust or statement of dissolution of a
46 general partnership, \$25;

47 (O) Revocation of voluntary dissolution of a corporation,
48 voluntary association or business trust, \$15;

49 (P) Articles of termination of a limited liability company,
50 cancellation of a limited partnership or statement of withdrawal
51 of limited liability partnership, \$25; and

52 (Q) Reinstatement of a domestic or foreign limited liability
53 company, ~~or~~ a professional limited liability company or a
54 domestic or foreign corporation after administrative dissolution
55 or revocation, \$25.

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

61 (A) Certificate of authority of for-profit corporation,
62 \$100.00;

63 (B) Certificate of authority of nonprofit corporation, \$50.00;

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64 (C) Certificate of authority of foreign limited liability
65 companies, \$150;

66 (D) Certificate of exemption from certificate of authority,
67 \$25;

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

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

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

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

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

74 (J) Amendment or correction of certificate of authority of a
75 foreign corporation, including change of name or increase of
76 capital stock, in addition to any applicable license tax, \$25;

77 (K) Amendment or correction of certificate of limited
78 partnership, limited liability partnership, limited liability
79 company or professional limited liability company, voluntary
80 association or business trust, \$25;

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

84 (M) Amendment and restatement of certificate of authority
85 or of registration of a corporation, limited partnership, limited
86 liability partnership, limited liability company or professional
87 limited liability company, voluntary association or business
88 trust, \$25;

89 (N) Articles of merger of two corporations, limited partner-
90 ships, limited liability partnerships, limited liability companies
91 or professional limited liability companies, voluntary associa-

92 tions or business trusts, \$25, and for each addition party to the
93 merger in excess of two, \$5;

94 (O) Statement of conversion, when permitted, from one
95 business entity into another business entity, in addition to the
96 cost of filing the appropriate articles or certificate to organize the
97 surviving entity, \$25; and

98 (P) Certificate of withdrawal or cancellation of a corpora-
99 tion, limited partnership, limited liability partnership, limited
100 liability company, voluntary association or business trust, \$25.

101 Notwithstanding any other provision of this section to the
102 contrary, after June 13, 2008, the fees described in this subdivi-
103 sion that are collected for the issuance of a certificate relating to
104 the initial registration of a corporation, limited partnership,
105 domestic limited liability company or foreign limited liability
106 company shall be deposited in the general administrative fees
107 account established by this section.

108 (3) For receiving, filing and recording a change of the
109 principal or designated office, change of the agent of process
110 and/or change of officers, directors, partners, members or
111 managers, as the case may be, of a corporation, limited partner-
112 ship, limited liability partnership, limited liability company or
113 other business entity as provided by law, \$15.

114 (4) For receiving, filing and preserving a reservation of a
115 name for each one hundred twenty days or for any other period
116 in excess of seven days prescribed by law for a corporation,
117 limited partnership, limited liability partnership or limited
118 liability company, \$15.

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

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

123 (B) Certificate of existence of a domestic limited liability
124 company, and certificate of authorization foreign limited liability
125 company, \$10;

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

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

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

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

135 (G) For the annual renewal of the name registration, \$10;
136 and

137 (H) Any other certificate not specified in this subdivision,
138 \$10.

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

141 (A) Certificate or apostille relating to the authority of certain
142 public officers, including the membership of boards and com-
143 missions, \$10;

144 (B) For each additional certificate pertaining to the same
145 transaction, \$5;

146 (C) Any other certificate not specified in this subdivision,
147 \$10;

148 (D) For acceptance, indexing and recordation of service of
149 process any corporation, limited partnership, limited liability
150 partnership, limited liability company, voluntary association,

151 business trust, insurance company, person or other entity as
152 permitted by law, \$15;

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

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

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

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

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

172 (C) For any search of records maintained on site for the
173 purpose of obtaining copies of documents or printouts of data,
174 \$5;

175 (D) For any search of records maintained in electronic
176 format which requires special programming to be performed by
177 the state information services agency or other vendor any actual
178 cost but not less than, \$25, which cost is in addition to the cost
179 of any copies of printouts prepared or any certificate issued
180 pursuant to or based on the search; and

181 (E) For recording any paper for which no specific fee is
182 prescribed, \$5.

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

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

187 (B) For each sheet after the first, \$.50;

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

189 (D) For producing and providing photocopies of lists,
190 reports, guidelines and other documents produced in multiple
191 copies for general public use, a publication price to be estab-
192 lished by the Secretary of State at a rate approximating \$2 plus
193 \$.10 per page and rounded to the nearest dollar; and

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

198 (b) The Secretary of State may propose legislative rules for
199 promulgation for charges for on-line electronic access to
200 database information or other information maintained by the
201 Secretary of State.

202 (c) For any other work or service not enumerated in this
203 subsection, the fee prescribed elsewhere in this code or a rule
204 promulgated under the authority of this code.

205 (d) The records maintained by the Secretary of State are
206 prepared and indexed at the expense of the state and those
207 records may not be obtained for commercial resale without the
208 written agreement of the state to a contract including reimburse-
209 ment to the state for each instance of resale.

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

214 (f) There is hereby continued in the State Treasury a special
215 revenue account to be known as the "service fees and collec-
216 tions" account. Expenditures from the account shall be used for
217 the operation of the office of the Secretary of State and are not
218 authorized from collections but are to be made only in accor-
219 dance with appropriation by the Legislature and in accordance
220 with the provisions of article three, chapter twelve of this code
221 and upon the fulfillment of the provisions set forth in article two,
222 chapter five-a of this code. Notwithstanding any other provision
223 of this code to the contrary, except as provided in subsection (h)
224 of this section and section two-a of this article, one half of all the
225 fees and service charges established in the following sections
226 and for the following purposes shall be deposited by the Secre-
227 tary of State or other collecting agency to that special revenue
228 account and used for the operation of the office of the Secretary
229 of State:

230 (1) The annual attorney-in-fact fee for corporations and
231 limited partnerships established in section five, article twelve-c,
232 chapter eleven of this code;

233 (2) The fees received for the sale of the State Register, Code
234 of State Rules and other copies established by rule and autho-
235 rized by section seven, article two, chapter twenty-nine-a of this
236 code;

237 (3) The registration fees, late fees and legal settlements
238 charged for registration and enforcement of the charitable
239 organizations and professional solicitations established in
240 sections five, nine and fifteen-b, article nineteen, chapter twenty-
241 nine of this code;

242 (4) The annual attorney-in-fact fee for limited liability
243 companies as designated in section one hundred eight, article
244 one, chapter thirty-one-b of this code and established in section
245 two hundred eleven, article two of said chapter. After June 30,
246 2008, the annual report fees designated in section one hundred
247 eight, article one, chapter thirty-one-b of this code shall upon
248 collection be deposited in the general administrative fees account
249 described in subsection (h) of this section;

250 (5) The filing fees and search and copying fees for uniform
251 commercial code transactions established by section five
252 hundred twenty-five, article nine, chapter forty-six of this code;

253 (6) The annual attorney-in-fact fee for licensed insurers
254 established in section twelve, article four, chapter thirty-three of
255 this code;

256 (7) The fees for the application and record maintenance of
257 all notaries public established by section one hundred seven,
258 article one, chapter twenty-nine-c of this code;

259 (8) The fees for the application and record maintenance of
260 commissioners for West Virginia as established by section
261 twelve, article four, chapter twenty-nine of this code;

262 (9) The fees for registering credit service organizations as
263 established by section five, article six-c, chapter forty-six-a of
264 this code;

265 (10) The fees for registering and renewing a West Virginia
266 limited liability partnership as established by section one, article
267 ten, chapter forty-seven-b of this code;

268 (11) The filing fees for the registration and renewal of
269 trademarks and service marks established in section seventeen,
270 article two, chapter forty-seven of this code;

271 (12) All fees for services, the sale of photocopies and data
272 maintained at the expense of the Secretary of State as provided
273 in this section; and

274 (13) All registration, license and other fees collected by the
275 Secretary of State not specified in this section.

276 (g) Any balance in the service fees and collections account
277 established by this section which exceeds \$500,000 as of June
278 30, 2003, and each year thereafter, expires to the state fund,
279 General Revenue Fund.

280 (h)(1) Effective July 1, 2008, there is hereby created in the
281 State Treasury a special revenue account to be known as the
282 general administrative fees account. Expenditures from the
283 account shall be used for the operation of the Office of the
284 Secretary of State and are not authorized from collections but are
285 to be made only in accordance with appropriation by the
286 Legislature and in accordance with the provisions of article
287 three, chapter twelve of this code and upon the fulfillment of the
288 provisions set forth in article two, chapter eleven-b of this code.
289 For the fiscal year ending June 30, 2009, expenditures are
290 authorized from collections rather than pursuant to an appropria-
291 tion by the Legislature. Any balance in the account at the end of
292 each fiscal year shall not revert to the General Revenue Fund but
293 shall remain in the fund and be expended as provided by this
294 subsection.

295 (2) After June 30, 2008, all the fees and service charges
296 established in section two-a of this article for the following
297 purposes shall be collected and deposited by the Secretary of
298 State or other collecting agency in the general administrative
299 fees account and used for the operation of the Office of the
300 Secretary of State:

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

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

308 (C) The fees for the purchase of date and updates related to
309 the state's Business Organizations Database described in section
310 two-a of this article.

311 (i) There is continued in the office of the Secretary of State
312 a noninterest bearing, escrow account to be known as the
313 "prepaid fees and services account". This account is for the
314 purpose of allowing customers of the Secretary of State to
315 prepay for services, with payment to be held in escrow until
316 services are rendered. Payments deposited in the account shall
317 remain in the account until services are rendered by the Secre-
318 tary of State and at that time the fees will be reallocated to the
319 appropriate general or special revenue accounts. There shall be
320 no fee charged by the Secretary of State to the customer for the
321 use of this account and the customer may request the return of
322 any moneys maintained in the account at any time without
323 penalty. The assets of the prepaid fees and services account do
324 not constitute public funds of the state and are available solely
325 for carrying out the purposes of this section.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Wells
Chairman, House Committee

Patsy Tolson
Member ~~Chairman~~ Senate Committee

Originating in the House.

In effect ninety days from passage.

Gregg M. Smith
Clerk of the House of Delegates

Joseph M. Minard
Clerk of the Senate

2013 APR 29 PM 6:01
SECRETARY OF STATE

FILED

Rick Warren
Speaker of the House of Delegates

Jeffrey H. Jones
President of the Senate

The within *is approved* this the *29th*
day of *April*, 2013.

Earl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

APR 25 2013

Time 11:40 am