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.
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.


(a) A corporation that has had its certificate of authority administratively revoked under section one thousand three hundred thirty-one of this article 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 corporation and the effective date of the administrative revocation;

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

(3) Demonstrate that the corporation's name satisfies the requirements of section one thousand five hundred six, article fifteen of this chapter; and
(4) Obtain a certificate from the Tax Commissioner reciting that all taxes owed by the corporation have been paid.

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

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


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

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

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

(d) The circuit court's final decision may be appealed to the West Virginia Supreme Court of Appeals in accordance with 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.

(a) A corporation that has had its certificate of authority administratively revoked under section one thousand four hundred thirty-one of this article 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 corporation and the effective date of the administrative revocation;

2. Demonstrate that the ground or grounds for revocation have been eliminated;

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

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

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

(c) When a reinstatement is granted, the reinstatement relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes its business as if the administrative revocation had never occurred.
§31E-14-1533. Appeal from denial of reinstatement.

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

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

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

(d) The circuit court's final decision may be appealed to the West Virginia Supreme Court of Appeals in accordance with 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.

(a) Except as may be otherwise provided in this code, the Secretary of State shall charge for services rendered in his or her office the following fees to be paid by the person to whom the service is rendered at the time it is done:

(1) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the formation, amendment, change of name, registration of trade name, merger, consolidation, conversion, renewal, dissolution, termination, cancellation,
withdrawal revocation and reinstatement of business entities organized within the state, as follows:

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

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

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

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

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

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

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

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

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

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

(K) Registration of trade name, otherwise designated as a true name, fictitious name or D.B.A. (doing business as) name for any domestic business entity as permitted by law, $25;
(L) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations or business trusts, $25, and for each additional party to the merger in excess of two, $5;

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

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

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

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

(Q) Reinstatement of a domestic or foreign limited liability company, a professional limited liability company or a domestic or foreign corporation after administrative dissolution or revocation, $25.

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

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

(B) Certificate of authority of nonprofit corporation, $50.00;
(C) Certificate of authority of foreign limited liability companies, $150;

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

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

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

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

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

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

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

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

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

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

(N) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associa-
tions or business trusts, $25, and for each addition party to the
merger in excess of two, $5;

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

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

Notwithstanding any other provision of this section to the
contrary, after June 13, 2008, the fees described in this subdivi-
sion that are collected 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 shall be deposited in the general administrative fees
account established by this section.

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

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

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

(A) Certificate of good standing of a domestic or foreign
corporation, $10;
(B) Certificate of existence of a domestic limited liability company, and certificate of authorization foreign limited liability company, $10;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) For any search of records maintained in electronic format which requires special programming to be performed by the state information services agency or other vendor any actual cost but not less than, $25, which cost is in addition to the cost of any copies of printouts prepared or any certificate issued pursuant to or based on the search; and
(E) For recording any paper for which no specific fee is prescribed, $5.

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

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

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

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

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

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

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

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

(d) The records maintained by the Secretary of State are prepared and indexed at the expense of the state and those records may not be obtained for commercial resale without the written agreement of the state to a contract including reimbursement to the state for each instance of resale.
(e) The Secretary of State may provide printed or electronic information free of charge as he or she considers necessary and efficient for the purpose of informing the general public or the news media.

(f) There is hereby continued in the State Treasury a special revenue account to be known as the “service fees and collections” account. Expenditures from the account shall be used for the operation of the office of the Secretary of State and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. Notwithstanding any other provision of this code to the contrary, except as provided in subsection (h) of this section and section two-a of this article, one half of all the fees and service charges established in the following sections and for the following purposes shall be deposited by the Secretary of State or other collecting agency to that special revenue account and used for the operation of the office of the Secretary of State:

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

2. The fees received for the sale of the State Register, Code of State Rules and other copies established by rule and authorized by section seven, article two, chapter twenty-nine-a of this code;

3. The registration fees, late fees and legal settlements charged for registration and enforcement of the charitable organizations and professional solicitations established in sections five, nine and fifteen-b, article nineteen, chapter twenty-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;
(12) All fees for services, the sale of photocopies and data maintained at the expense of the Secretary of State as provided in this section; and

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

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

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

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

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

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

(i) There is continued in the office of the Secretary of State a noninterest bearing, escrow account to be known as the “prepaid fees and services account”. This account is for the purpose of allowing customers of the Secretary of State to prepay for services, with payment to be held in escrow until services are rendered. Payments deposited in the account shall remain in the account until services are rendered by the Secretary of State and at that time the fees will be reallocated to the appropriate general or special revenue accounts. There shall be no fee charged by the Secretary of State to the customer for the use of this account and the customer may request the return of any moneys maintained in the account at any time without penalty. The assets of the prepaid fees and services account do not constitute public funds of the state and are available solely for carrying out the purposes of this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Member, 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 29th day of April, 2013.

Governor