

# State of South Dakota

NINETY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2016

400X0354

## JOINT APPROPRIATIONS ENGROSSED NO. **SB 49** - 02/29/2016

Introduced by: The Committee on Appropriations at the request of the Office of the Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise certain fees collected by the secretary of state to  
2 make an appropriation for an online business registration and filing system, and to declare  
3 an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That the code be amended by adding a NEW SECTION to read:

6 If a document, statement, or report is filed in the Office of the Secretary of State pursuant  
7 to §§ 47-1A-122, 47-28-6, 47-34A-212, 48-7-206.1, and 48-7A-1208 and the document,  
8 statement, or report is not filed electronically, but is able to be filed electronically and is allowed  
9 to be filed electronically, an additional fee of fifteen dollars shall be collected. The fee collected  
10 pursuant to this section shall be deposited in the general fund.

11 Section 2. That § 47-34A-212 be amended to read:

12 47-34A-212. The secretary of state shall charge and collect for:

13 (a) Filing the articles of organization in the case of a domestic limited liability company,  
14 a filing fee of one hundred fifty dollars. Filing the articles of organization in the case



1 of a foreign limited liability company, a filing fee of seven hundred fifty dollars;

2 (b) ~~Deleted by SL 2004, ch 279, § 2.~~

3 ~~—(c)—~~A reporting fee of fifty dollars, due and payable with the filing of each annual report.

4 Each entity that does not file or refuses to file its annual report within the time  
5 prescribed is subject to a penalty of fifty dollars to be assessed by the secretary of  
6 state.

7 Section 3. That § 1-8-12 be amended to read:

8 1-8-12. The secretary of state shall charge a fee of fifty dollars for any expedited service.

9 Expedited service is defined as completion sooner than the normal course of business upon  
10 request. The office shall deposit any revenue from this fee into the financing statement and  
11 annual report filing fee fund.

12 Section 4. That chapter 1-8 be amended by adding a NEW SECTION to read:

13 The secretary of state may promulgate rules, pursuant to chapter 1-26, to establish a  
14 convenience fee. A convenience fee means a fee charged for the privilege of being able to file  
15 by paper or pay a fee by credit card, charge card, debit card, e-checks, or other form of electronic  
16 payment. The maximum fee that may be charged for the privilege of being able to file by paper  
17 is twenty dollars per filing. The maximum fee that may be charged for payment by credit card,  
18 charge card, debit card, e-checks, or other form of electronic payment shall be three percent of  
19 the transaction amount.

20 Section 5. That § 47-1A-122 be amended to read:

21 47-1A-122. The Office of the Secretary of State shall collect the following fees when the  
22 documents described in this section are delivered for filing:

23 (1) Articles of incorporation, \$150;

24 (2) Application for use of indistinguishable name, \$25;

- 1 (3) Application for reserved name, \$25;
- 2 (4) Notice of transfer of reserved name, \$15;
- 3 (5) Application for registered name, \$25;
- 4 (6) Application for renewal of registered name, \$15. A renewal application may be filed
- 5 between the first day of October and the thirty-first day of December in each year and
- 6 shall extend the registration for the following year;
- 7 (7) to (9) Repealed by SL 2008, ch 275, § 27;
- 8 (10) Articles of domestication, \$150;
- 9 (11) Articles of charter surrender, \$150;
- 10 (12) Articles of domestication and conversion, \$150;
- 11 (13) Articles of entity conversion, \$150;
- 12 (14) Amendment of articles of incorporation, \$60;
- 13 (15) Restatement of articles of incorporation, \$60;
- 14 (16) Articles of merger or share exchange, \$60;
- 15 (17) Articles of dissolution, \$10;
- 16 (18) Articles of revocation of dissolution, \$10;
- 17 (19) Certificate of administrative dissolution, no charge;
- 18 (20) Application for reinstatement following administrative dissolution, plus any
- 19 delinquent annual report filing fees for the period ~~prior to~~ before the reinstatement
- 20 application, \$300;
- 21 (21) Certificate of reinstatement, no charge;
- 22 (22) Certificate of judicial dissolution, no charge;
- 23 (23) Application for certificate of authority, \$750;
- 24 (24) Application for amended certificate of authority, \$250;

- 1 (25) Application for certificate of withdrawal, \$10;
- 2 (26) Application for transfer of authority, \$25;
- 3 (27) Certificate of revocation of authority to transact business, no charge;
- 4 (28) Annual report, \$50. Each entity that does not file or refuses to file its annual report
- 5 within the time prescribed is subject to a penalty of fifty dollars to be assessed by the
- 6 secretary of state;
- 7 (29) Articles of correction, \$25;
- 8 (30) Application for certificate of existence or authorization, \$20;
- 9 (31) Amended annual report, \$25;
- 10 (32) Any other document required or permitted to be filed by this chapter, \$20.

11 The Office of the Secretary of State shall collect a fee of thirty dollars each time process is  
12 served on the Office of the Secretary of State under this chapter. The party to a proceeding  
13 causing service of process is entitled to recover this fee as costs if the party prevails in the  
14 proceeding.

15 Section 6. That § 48-7A-1208 be amended to read:

16 48-7A-1208. The provisions of § 1-8-10 notwithstanding, the fee for filing the statements  
17 and reports provided for in the following sections with the secretary of state is as follows:

- 18 (1) Section 48-7A-303, Statement of Authority, one hundred twenty-five dollars;
- 19 (2) Section 48-7A-304, Statement of Denial, ten dollars;
- 20 (3) Section 48-7A-704, Statement of Dissociation, ten dollars;
- 21 (4) Section 48-7A-805, Statement of Dissolution, ten dollars;
- 22 (5) Section 48-7A-907, Statement of Merger, sixty dollars;
- 23 (6) Section 48-7A-1001, Statement of Qualification, one hundred twenty-five dollars;
- 24 (6A) Section 48-7A-1001, Statement of Change, ten dollars;

1 (7) Section 48-7A-1003, Annual Report, fifty dollars. Each limited liability partnership,  
2 domestic or foreign, that does not file or refuses to file its annual report within the  
3 time prescribed is subject to a penalty of fifty dollars to be assessed by the secretary  
4 of state;

5 (8) Section 48-7A-1001.1, Statement of Amendment, fifteen dollars;

6 (9) Section 48-7A-1001.2, Statement of Cancellation, ten dollars;

7 (10) Section 48-7A-1102, Statement of Foreign Qualification, one hundred twenty-five  
8 dollars;

9 (11) Section 48-7A-1102.1, Statement of Amendment of Foreign Qualification, fifteen  
10 dollars;

11 (12) Section 48-7A-1102.2, Statement of Cancellation, ten dollars; and

12 (13) Filing any other statement, ten dollars.

13 Section 7. That § 47-28-8 be amended to read:

14 47-28-8. The secretary of state shall charge and collect for furnishing a certified copy of any  
15 document, instrument, or paper relating to a corporation, ~~one dollar~~ two dollars per page, and  
16 fifteen dollars for the certificate and affixing the seal ~~thereto~~.

17 Section 8. That § 1-8-10 be amended to read:

18 1-8-10. The secretary of state shall charge the following fees for services performed in the  
19 Office of the Secretary of State and shall collect the fees in advance:

20 (1) For making a copy or transcript of any record, instrument, or paper on file in the  
21 office, ~~one dollar~~ two dollars per page;

22 (2) For filing and safekeeping of any instrument or paper required by law to be filed  
23 only, ten dollars; except the oath of office of members of the Legislature and  
24 legislative officers, employees and governmental officers, employees and agencies,

1           for ~~which~~ there is no fee;

2           (3) For each commission, requisition, passport, or other document, signed by the  
3           Governor and attested by the secretary of state, under the great seal of the state,  
4           except commissions issued for executive appointment and extraditions, and making  
5           the proper record for the same, five dollars;

6           (4) For filing application, bond, and issuing commission of notary public, thirty dollars;

7           (5) For official certificate, attestation, and impression of the great seal, ~~five~~ twenty-five  
8           dollars;

9           (6) For filing or recording any other instrument or document, ten dollars; and

10          (7) For a certified copy of any document, instrument, or paper on file in the office, ~~one~~  
11          ~~dollar~~ two dollars per page and fifteen dollars for the certificate and affixing the seal.

12          Section 9. That § 37-11-1 be amended to read:

13          37-11-1. Any person regularly engaging in or conducting a business in this state shall file  
14          a fictitious name statement unless one of the following apply:

15          (1) The name of the business plainly shows the true surname of each person interested  
16          in the business; or

17          (2) The name of the business is on file with the secretary of state in a required business  
18          filing.

19          The fictitious name statement shall include the name, post office address, and residence  
20          address of each person interested in the business and the address where the main office of the  
21          business is to be maintained. The fictitious name statement shall be electronically filed with the  
22          secretary of state, or filed in paper form with any register of deeds in the state. The filing shall  
23          be renewed every fifth year thereafter. A fee of ten dollars shall be paid with each new filing and  
24          renewal. The fee shall be ~~retained by the filing office receiving the filing~~ deposited into the

1 financing statement and annual report filing fee fund.

2 Section 10. That § 37-11-2 be amended to read:

3 37-11-2. A verified statement as described in § 37-11-1 shall be similarly filed upon any  
4 change of twenty-five percent or more of the ownership interest in the business. A fee of ten  
5 dollars shall be paid with each filing under this section. The fee shall be ~~retained by the filing~~  
6 ~~office receiving the filing~~ deposited into the financing statement and annual report filing fee  
7 fund.

8 Section 11. All fees collected by the secretary of state that are not specifically dedicated to  
9 the financing and annual report filing fee fund or for administering the concealed carry program  
10 pursuant to § 23-7-53 or for administering any concealed carry programs enacted by the  
11 Legislature after 2015, shall be deposited in the state general fund.

12 Section 12. That § 57A-9-525 be amended to read:

13 57A-9-525. (a) Except as otherwise provided in subsection (e), the fee for filing and  
14 indexing a record under this part, other than an initial financing statement of the kind described  
15 in subsection (b), is the amount specified in subsection (c), if applicable, plus:

16 (1) Twenty-five dollars if the record is communicated in writing and consists of one  
17 page, and five dollars for additional pages. One dollar of this fee shall be deposited  
18 into the financing statement and annual report filing fee fund;

19 (2) Twenty dollars if the record is communicated by internet. One dollar of this fee shall  
20 be deposited into the financing statement and annual report filing fee fund; and

21 (3) Twenty-five dollars if the record is communicated by another medium authorized by  
22 filing-office rule.

23 (b) The secretary of state may request a fee for on-line services for UCC data images  
24 available on a subscription basis. The office shall deposit any revenue from this fee into the

1 financing statement and annual report filing fee fund.

2 (c) Except as otherwise provided in subsection (e), the fee for filing, whether communicated  
3 in writing, electronically, or another medium authorized by filing-office rule, and indexing an  
4 initial financing statement of the following kind is the amount specified in subsection (c), if  
5 applicable, plus:

- 6 (1) Forty dollars if the financing statement indicates that it is filed in connection with a  
7 public-finance transaction;
- 8 (2) Forty dollars if the financing statement indicates that it is filed in connection with a  
9 manufactured-home transaction.

10 ~~(c)~~(d) Except as otherwise provided in subsection (e), if a record is communicated in writing  
11 or electronically, the fee for each name more than one required to be indexed is three dollars.

12 ~~(d)~~(e) The fee for responding to a request for information from the filing office, including  
13 for issuing a certificate showing whether there is on file any financing statement naming a  
14 particular debtor, is:

- 15 (1) Twenty dollars if the request is communicated in writing; and
- 16 (2) Ten dollars if the request is communicated by internet authorized by filing-office  
17 rule.

18 Upon request the filing officer shall furnish a copy of any filed financing statement or  
19 statement of assignment for a uniform fee of one dollar per page.

20 ~~(e)~~(f) This section does not require a fee with respect to a record of a mortgage which is  
21 effective as a financing statement filed as a fixture filing or as a financing statement covering  
22 as-extracted collateral or timber to be cut under § 57A-9-502(c). However, the recording and  
23 satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

24 Section 13. There is hereby appropriated from the general fund the sum of seven hundred



1 sixteen thousand dollars (\$716,000), or so much thereof as may be necessary, to the secretary  
2 of state for the purpose of purchasing and developing software for an online business  
3 registration and filing system.

4 Section 14. The secretary of state shall approve vouchers and the state auditor shall draw  
5 warrants to pay expenditures authorized by section 13 of this Act.

6 Section 15. Any amounts appropriated in this Act not lawfully expended or obligated shall  
7 revert in accordance with the procedures prescribed in chapter 4-8.

8 Section 16. Whereas, sections 13 to 15, inclusive, of this Act are necessary for the support  
9 of the state government and its existing public institutions, an emergency is hereby declared to  
10 exist, and sections 13 to 15, inclusive, of this Act shall be in full force and effect from and after  
11 its passage and approval.