



SENATE BILL 114: Annual Report Modernization.

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2017-2018 General Assembly

Committee:	Senate Judiciary. If favorable, re-refer to Commerce and Insurance. If favorable, re-refer to Rules and Operations of the Senate	Date:	March 30, 2017
Introduced by:	Sens. Wells, Tarte	Prepared by:	Bill Patterson
Analysis of:	PCS to First Edition S114-CSTG-6		Committee Co-Counsel

OVERVIEW: *The Proposed Committee Substitute for Senate Bill 114 would make a number of changes to the law governing the filing of annual reports by business entities. Among other things, the bill would:*

- *Require electronic filing of annual reports by business corporations, limited liability companies, and limited liability partnerships, with a uniform filing fee of \$125.*
- *Require nonprofit corporations to file annual reports electronically, with no filing fee.*
- *Make other technical and conforming changes to the law.*

The PCS makes the following substantive changes to the First Edition of the bill:

- *For business entities having gross revenues less than \$175,000 in their fiscal year ending in 2017, the effective date for required electronic filing is delayed by one year from January 1, 2018 to January 1, 2019.*
- *The due date for nonprofit corporation annual reports is moved from May 15 to November 15.*
- *Until January 1, 2021, the Secretary of State is authorized to waive the reinstatement fee for a nonprofit corporation seeking reinstatement after being administratively dissolved for delinquent annual report filing.*
- *The PCS also deletes provisions in the First Edition that would have:*
 - *Imposed a civil penalty for omitting certain required information in the annual report.*
 - *Prohibited the Secretary of State from charging an additional amount for electronic filing or electronic payment for filing of the annual report.*
 - *Required the State Treasurer to remit to the Secretary of State \$2.00 from each annual report fee to support e-commerce initiatives.*

CURRENT LAW:

Insurance companies, limited liability companies (LLCs), and limited liability partnerships (LLPs) authorized to transact business in North Carolina are required to deliver an annual report to the Secretary of State. Business corporations other than insurance companies are given the option either to deliver a paper copy of their annual report to the Secretary of Revenue or to file their annual report electronically

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Senate PCS 114

Page 2

with the Secretary of State. Nonprofit corporations have not been required to file annual reports since 1995.¹

Business corporations pay a filing fee of \$25 if the annual report is filed in paper format and \$18 if it is filed electronically. The filing fee for LLCs and LLPs is \$200, regardless of how the report is filed. All filing fees collected from business corporations are credited to the general fund as tax revenue.² In addition to the filing fee, the Secretary of State charges a \$2.00 electronic transaction fee for each annual report that is filed electronically.³

Required contents of each annual report include the name of the entity's registered agent, the street and mailing address of its registered office, and the business addresses of its principal officers. If the information contained in its most recent annual report has not changed, the entity can certify that fact instead of restating all of that information in the annual report.

The Secretary of State must notify a filing entity if its annual report is missing any required information and return the report to it for correction. If the report is corrected and resubmitted within 30 days after the notice, it is deemed to be timely filed.

For delinquency in filing its annual report, a business corporation or LLC can be administratively dissolved⁴ and the charter of an LLP can be revoked.⁵ To be reinstated, the entity must follow procedures set forth in G.S. 55-14-22.⁶ An administratively dissolved corporation or LLC must pay a fee of \$25 to the Secretary of Revenue to be reinstated.⁷

BILL ANALYSIS:

The PCS would:

- Require business corporations,⁸ LLCs,⁹ nonprofit corporations,¹⁰ and LLPs¹¹ to file annual reports electronically with the Secretary of State.
- Require each entity's annual report to include:
 - The email address for its registered agent and, if different, the entity's email address.
 - The physical business addresses of its principal officers.
 - The names, titles, and physical business addresses of any other person who has actual authority to bind the corporation.

¹ G.S. 55A-16-22, which required nonprofit corporations to file annual reports, was repealed by Session Law 1995-539, s. 8, effective July 29, 1995.

² G.S. 105-256.1.

³ G.S. 66-58.12 authorizes a State agency to charge a fee to cover its costs of permitting transactions to be conducted electronically, with all revenue derived from the fee to be used for e-commerce initiatives and projects approved by the State Chief Information Officer, in consultation with the Joint Legislative Oversight Committee on Information Technology.

⁴ G.S. 55-14-20(2); G.S. 57D-6-06(2).

⁵ G.S. 59-84.4(f).

⁶ G.S. 57D-6-06(c) (LLCs) and G.S. 59-84.4(h) (LLPs) incorporate by reference the procedures for reinstatement applicable to business corporations under G.S. 55-14-22.

⁷ G.S. 105-232.

⁸ PCS Subsection 1.(a).

⁹ PCS Subsection 2.(a).

¹⁰ PCS Subsection 3.(a).

¹¹ PCS Subsection 4.(a).

Senate PCS 114

Page 3

- Eliminate the option permitting a business corporation, LLC or LLP to certify that the information contained in its most recently filed annual report has not changed in lieu of restating that information.¹²
- Impose a uniform filing fee of \$125 for annual reports submitted by corporations,¹³ LLCs¹⁴ and LLPs.¹⁵ There would be no fee required to file a nonprofit corporation annual report.¹⁶
- Repeal the requirement that fees for filing business corporation annual reports must be credited to the general fund as tax revenue, and delete a cross-reference to the repealed provision.¹⁷
- Disqualify an entity from receiving a refund of sales and use taxes paid for any period for which it has not submitted the required annual report(s). Upon providing satisfactory evidence that the required report(s) have been filed, a disqualified entity's eligibility to receive refunds would be reinstated.¹⁸
- Require the Secretary of State and Secretary of Revenue to develop a process for verifying that all required annual reports have been filed by an applicant seeking reinstatement of its eligibility to receive refunds of sales and use taxes paid, and to make this process operational before January 1, 2018.¹⁹
- Make a nonprofit corporation subject to administrative dissolution for delinquency in filing its annual report.²⁰
- Require a business corporation,²¹ LLC,²² nonprofit corporation,²³ or LLP²⁴ that has been administratively dissolved to pay any penalties, fees, or other payments due before it can be reinstated by the Secretary of State.
- Increase the fee for reinstatement by an administratively dissolved business corporation or LLC from \$25 to \$50; require the Secretary of Revenue to remit \$25 of each fee collected to the Secretary of State to be used solely to cover its share of the cost of reinstatement; appropriate funds received by the Secretary of State under this provision for the maximum amount necessary to achieve this purpose; and require any funds received by the Secretary of State in excess of the amount to revert to the General Fund.²⁵
- Require the Program Evaluation Division to study the act's effect on staffing levels and customer service demands at the Office of the Secretary of State and the Department of Revenue, and to report the results of its study to the chairs of the Joint Legislative Program Evaluation Oversight

¹² PCS Subsections 1.(a), 2.(a), and 4.(a).

¹³ PCS Subsection 1.(c).

¹⁴ PCS Subsection 2.(b).

¹⁵ PCS Subsection 4.(b).

¹⁶ PCS Subsection 3.(d).

¹⁷ PCS Subsection 1.(d).

¹⁸ PCS Subsection 5.(a) (business corporations, LLCs, and LLPs); PCS Subsection 5.(b). (nonprofit corporations).

¹⁹ PCS Subsection 5.(c).

²⁰ PCS Subsection 3.(b).

²¹ PCS Subsection 1.(b).

²² PCS Subsection 2.(c).

²³ PCS Subsection 3.(c).

²⁴ PCS Subsection 4.(a).

²⁵ PCS Section 6.

Senate PCS 114

Page 4

Committee and the Joint Legislative Oversight Committee on General Government on or before August 1, 2019.²⁶

EFFECTIVE DATE: For entities having gross revenues of at least \$175,000 for their fiscal year ending in 2017, Parts I, II and IV of the act become effective January 1, 2018 and apply to annual reports due on or after that date. For entities having gross revenues of less than \$175,000 for their fiscal year ending in 2017, Parts I, II and IV of the act become effective January 1, 2019 and apply to annual reports due on or after that date. Part III of this act becomes effective January 1, 2019, and applies to annual reports due on or after that date. Subsection (a) of Section 5 of this act becomes effective January 1, 2018. Subsection (b) of Section 5 of this act becomes effective January 1, 2019. Section 6 of this act is effective when it becomes law, and applies to fees collected on or after that date. The remainder of this act is effective when it becomes law.

²⁶ PCS Section 7.