



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 7, 2017
Introduced by:	Sens. Wells, Tarte	Prepared by:	Bill Patterson
Analysis of:	First Edition		Committee Co-Counsel

OVERVIEW: *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 (LLCs), and limited liability partnerships (LLPs).*
- *Charge a uniform fee of \$125 for annual reports filed by business corporations, LLCs and LLPs.*
- *Require nonprofit corporations to file annual reports electronically with no filing fee.*
- *Authorize a \$250 civil penalty for failure to include certain required information in the annual report and make the willful failure to provide that information a Class 1 misdemeanor.*
- *Prohibit the Secretary of State from charging an additional fee for electronic submissions of annual reports or for electronic payment of the annual report fee.*
- *Require State Treasurer to remit \$2.00 to the Secretary of State from each annual report fee to support e-commerce initiatives.*
- *Make other changes to the law, including technical and conforming changes.*

CURRENT LAW:

Insurance companies, limited liability companies, and limited liability partnerships 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 of either delivering a paper annual report to the Secretary of Revenue or delivering an annual report electronically to the Secretary of State.

For business corporations, the fee for filing an annual report is \$25 (paper) and \$18 (electronic). The annual report filing fee for LLCs and LLPs is \$200. All annual report filing fees collected from business corporations are credited to the general fund as tax revenue.¹

Since 1995, nonprofit corporations have not been required to file an annual report.²

¹ G.S. 105-256.1.

² G.S. 55A-16-22, which required nonprofit corporations to file annual reports, was repealed by Session Law 1995-539, s. 8, effective July 29, 1995.

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The annual report must contain, among other things, 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 an entity's most recent annual report has not changed, the entity can certify that fact in lieu of setting forth all of that information in the annual report.

The Secretary of State must notify the entity if its annual report is missing any required information and return the report for correction. If it is corrected and resubmitted within 30 days after the notice, the report is deemed to be timely filed. A business corporation or LLC may be administratively dissolved for delinquency in filing its annual report.³ The charter of an LLP that is delinquent in filing its annual report may be revoked.⁴ To be reinstated, the entity must follow the procedures set forth in G.S. 55-14-22.⁵ In addition, an administratively dissolved corporation or LLC must pay a fee of \$25 to the Secretary of Revenue to be reinstated.⁶

A State agency is permitted 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.⁷

BILL ANALYSIS:

Provisions Related to Annual Report Filing Requirements

Section 1 (business corporations), **Section 4** (LLCs), **Section 6** (nonprofit corporations) and **Section 11** (LLPs) of the bill would:

- Require each entity to file an annual report electronically with the Secretary of State. For nonprofit corporations, the report's required contents would largely mirror the requirements for business corporations.
- Require each entity's annual report to include, in addition to current requirements:
 - 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.
- Provide that required information must be set forth in the annual report regardless of whether or not there have been any changes since the last annual report.
- Permit the Secretary of State to assess a civil penalty of up to \$250 if the annual report does not completely and accurately contain certain required information.
- Make it a Class 1 misdemeanor for any person to willfully fail to provide certain required information in the annual report.

³ G.S. 55-14-20(2); G.S. 57D-6-06(2).

⁴ G.S. 59-84.4(f).

⁵ 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.

⁶ G.S. 105-232.

⁷ G.S. 66-58.12(b), (c).

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Provisions Related to Annual Report Filing Fees

Sections 3, 5, and 9 of the bill would:

- Impose a uniform filing fee of \$125 for annual reports submitted by corporations, LLCs and LLPs, respectively.
- Require the State Treasurer to remit to the Secretary of State \$2.00 of each annual report fee collected to be used to fund e-commerce initiatives pursuant to G.S. 66-58-12(c), and provide that any funds so received are appropriated to the Secretary of State for that purpose.
- Prohibit the Secretary of State from charging any additional amount for the use of electronic filing and/or electronic payment for the filing of the annual report.

Section 12 would provide that there is no annual report fee due from a nonprofit corporation, and would prohibit the Secretary of State from charging a nonprofit corporation a fee for the use of electronic filing and/or electronic payment for the filing of the annual report.

Section 10 repeals the requirement that annual report filing fees from business corporations must be credited to the general fund as tax revenue and deletes a cross-reference to the repealed provision.

Provisions Disallowing Refund of Sales and Use Taxes for Failure to File Annual Report

Section 13 amends G.S. 105-164.14 to provide that for any period during which a business corporation, LLC or LLP has not submitted its required annual report, it will not be allowed a refund of sales and use taxes to which it otherwise would be entitled. Upon providing the Secretary of Revenue satisfactory evidence that the report has been filed, the entity would be allowed a refund of such sales and use taxes.

Section 14 amends G.S. 105-164.14 to include nonprofit corporations among the entities whose refund of sales and use taxes will be disallowed for failure to submit a required annual report.

Section 15 directs the Secretary of State and Secretary of Revenue to develop a process for verifying that an applicant for reinstatement has submitted all annual reports, as required by Section 13 of the bill, and to have the process operational prior to the effective date of Section 13.

Provisions Requiring Payment of Penalties to be Reinstated after Administrative Dissolution

Section 2 provides that a business corporation that has been administratively dissolved must pay any penalties, fees, or other payments due under Chapter 55 before it can be reinstated by the Secretary of State.

Section 7 provides that a nonprofit corporation may be administratively dissolved for delinquency in filing its annual report, and **Section 8** requires a nonprofit corporation that has been administratively dissolved to pay any penalties, fees, or other payments due under Chapter 55A before it can be reinstated by the Secretary of State.

Other Provisions

Section 16 increases the fee for reinstatement by an administratively dissolved business corporation or LLC from \$25 to \$50 and requires 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. In addition, Section 16 provides that any funds received by the Secretary of State under this provision are appropriated for the maximum amount necessary to achieve this purpose, and provides that any funds received by the Secretary of State in excess of the amount needed for this purpose shall revert to the General Fund.

Section 17 requires the Program Evaluation Division to study the effect this act's implementation will have on the staffing levels and customer service demands at the Office of the Secretary of State and the

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Department of Revenue, and to report the results of its study to the chairs of the Joint Legislative Program Evaluation Oversight Committee and the Joint Legislative Oversight Committee on General Government on or before August 1, 2019.

EFFECTIVE DATE: Sections 1 through 5 and Sections 10 through 12 of the act become effective January 1, 2018 and apply to annual reports due on or after that date. Section 13 of the act becomes effective January 1, 2018. Sections 6 through 9 and Section 14 of the act, relating to nonprofit corporations, become effective January 1, 2019. Section 16 of the act is effective when it becomes law and applies to fees collected on or after that date. The remainder of the act is effective when it becomes law.