

Fee Study



Secretary of State's Office
February 2021

At the request of the Joint Appropriations Committee, the Secretary of State's Office has undertaken a comprehensive look at all fees assessed by the Office.

The Wyoming Secretary of State's Office assesses 214 different fees officewide. Five separate divisions contribute to that revenue:

- 1. Business Division
- 2. Securities
- 3. Administration
- 4. Elections
- 5. Settlements & Fines

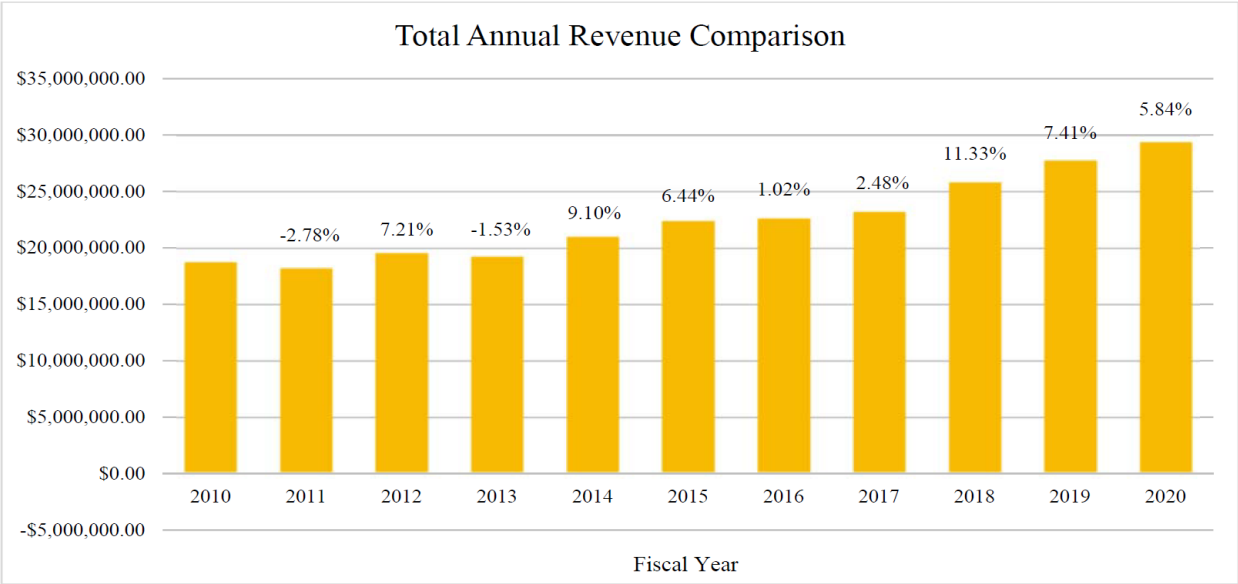
Our customer base is as diverse as the types of fees we assess. The Secretary's Office serves stockbrokers, investment advisors, candidates filing to run for office, lobbyists wishing to participate in the legislative process, businesses, small businesses supporting our local communities, notaries, individuals seeking to authenticate documents for foreign use and those who wish to use the bucking horse and rider trademark in their products and services.

Increases in fees charged by the Secretary's Office have varied through the years. Many of the fees have not seen an increase since the 1950s. The fees for consideration that are identified in this memorandum represent a thoughtful analysis of the issues important to our Office and the State of Wyoming as a whole. Of note, there is no recommendation to increase initial filing fees for-profit corporations and limited liability companies. Initial filings bring new businesses to our State. Our business fees are among the most competitive nationally, as well as with our surrounding states, and we would not want to deter anyone looking to form a new business in our State. The considerations set forth, if accepted in total, represent a revenue increase of approximately \$5.5 million a biennium to the general fund.

Revenue

During the 2019-2020 biennium, the Secretary of State's Office generated just over \$57.5 million dollars. This was an increase of \$8 million dollars over the last biennium. Of that, over \$44 million dollars was generated by our Business Division.

The following chart depicts the steady increase in revenue generated by the Secretary of State's Office over the last ten years.



It is with these increases in mind that our Office undertook a thoughtful look at global increases. With the Business Division being the primary revenue generator for our Office, we have identified numerous fee increases that are modest and will allow Wyoming to remain competitive, not only nationally, but also with our surrounding states. **Where you form a business is a choice – we want Wyoming to continue to be the choice.**

BUSINESS DIVISION

There are nine different business entity types that can be filed with the Secretary of State's Office:

- Profit Corporations
- Nonprofit Corporations
- Unincorporated Nonprofits
- Limited Liability Companies (LLC)
- General Partnerships
- Limited Partnerships
- Registered Limited Liability Partnerships
- Statutory Trusts
- Statutory Foundations

The filings for each of these entities go beyond just the initial filings and the annual report filings. Other associated filings include various amendments, dissolutions, withdrawals, conversions, domestications, mergers, restatement of articles of formation, transfers to another jurisdiction, reinstatements of dissolved entities, address changes, and filings related to their registered agent.

Business registrars also process “non-entity” filings. These include reserved names, trade names, trademarks and filings related to the Uniform Commercial Code and Effective Financing Statements. Additionally, registrars process a variety of miscellaneous filings such as various board filings, municipal hospital filings, joint powers agreements, emergency services agreements, and a variety of special district filings.

Initial Filing Fees

Of the nine entity types filed with our Office, profit corporations and LLCs are the two most commonly formed entities in Wyoming. The following graphs illustrate how the initial filing and annual report fees assessed in Wyoming rank in comparison to all states and how those same fees compare to the surrounding states of Colorado, Utah, Montana, Nevada, Nebraska, Idaho, North Dakota, Kansas and South Dakota. While most of the surrounding states have lower or the same fee, each of them have a form of corporate income tax, with the exception of South Dakota.

Initial filings are the heart of what brings new business to Wyoming. As previously mentioned, profit corporations and LLCs are the lion's share of the new filings that are submitted to the Secretary's Office. Our fees for these initial filings are among the most competitive nationally and regionally. Given that, we are recommending no change to the \$100 fee charged to create a domestic profit corporation or limited liability company.

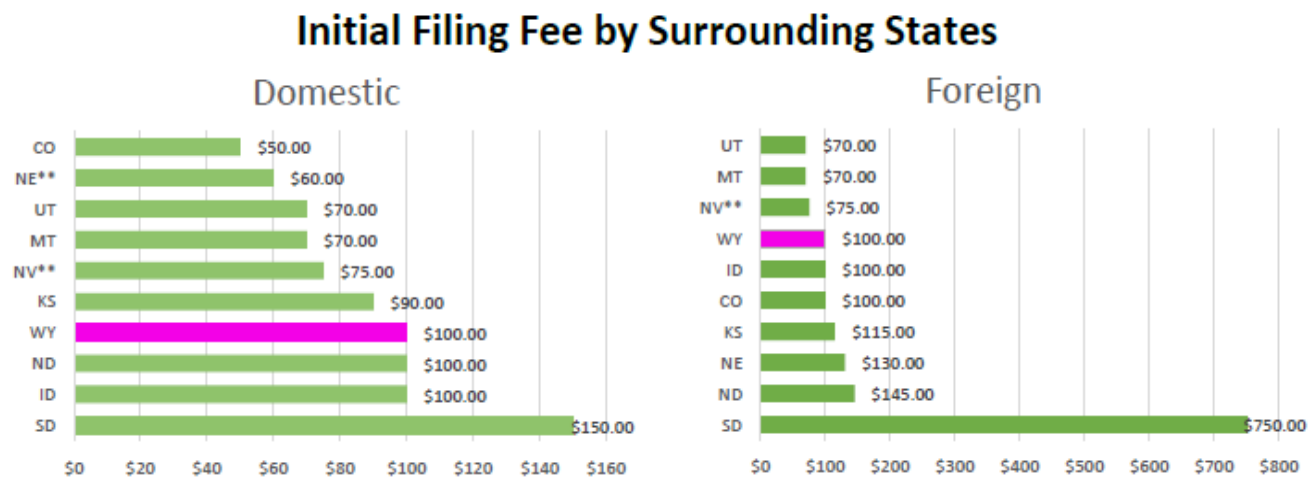
In FY 2019, the Business Division generated \$20,572,483 in revenue from various business filing fees and annual report filings. In FY 2020, that number increased to \$22,488,068 - an increase of 8.5% over one year.

Our suggestions include modest fee increases for entity types that are in the minority of those filed in Wyoming. We are suggesting an increase in the initial filing fee for nonprofit corporations from \$25 to \$50. This fee was last increased in 2000, from \$10 to \$25. Using our fiscal year 2020 numbers as a guide, this could increase revenue by approximately \$18,675.

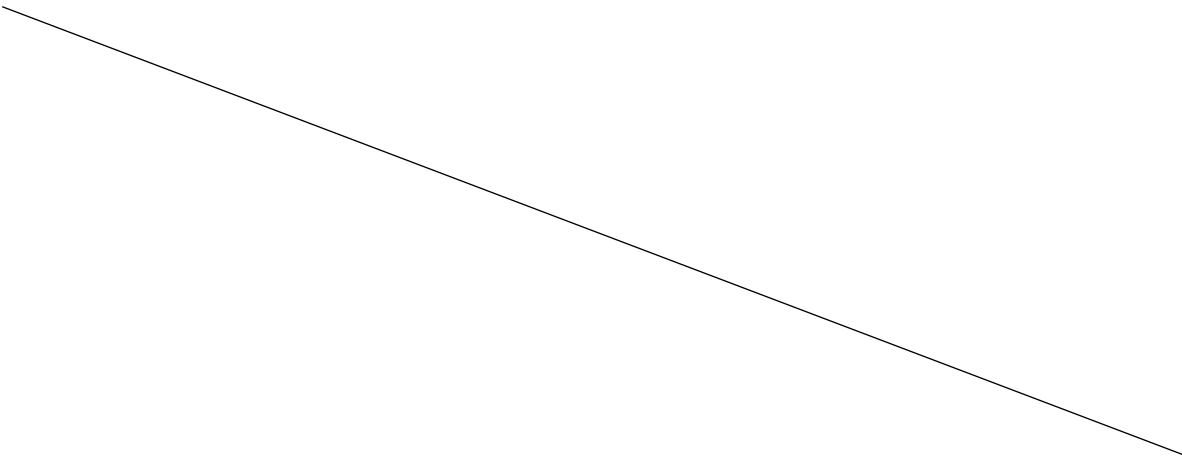
The legislature might want to consider an increase in filing fees for foreign entities seeking a certificate of authority to transact business in Wyoming. This fee would increase from \$100 to \$150. In FY20, we processed 1,853 of these certificates. Processing the same number of certificates under the new fee structure would result in a \$92,650 revenue increase.

As you will see from the following charts, Wyoming’s fees for-profit corporations and limited liability companies are very competitive not only with our surrounding states, but also nationally.

PROFIT CORPORATIONS

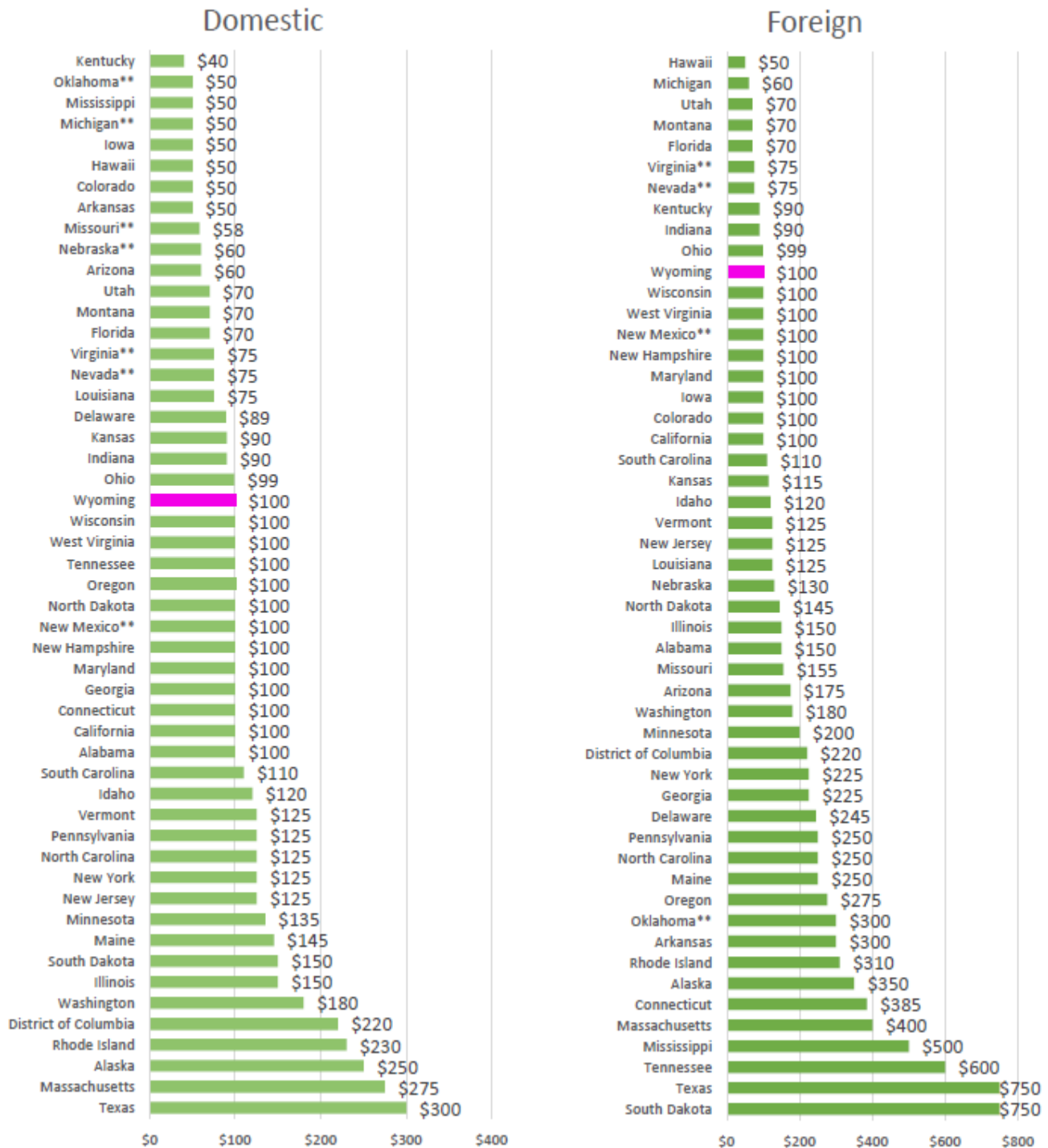


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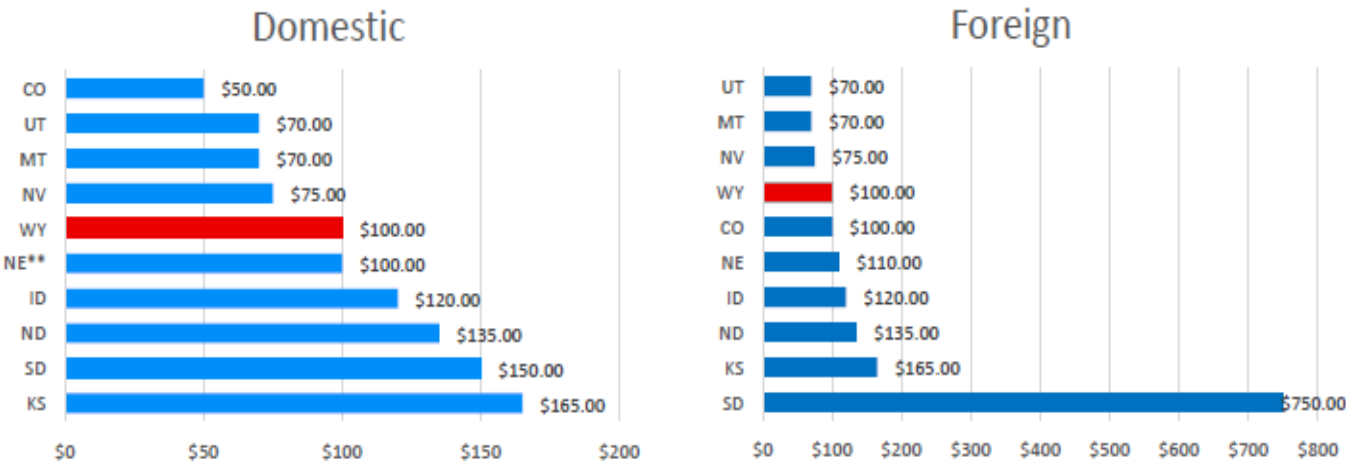
PROFIT CORPORATIONS

Minimum Initial Filing Fee by State



LIMITED LIABILITY COMPANIES

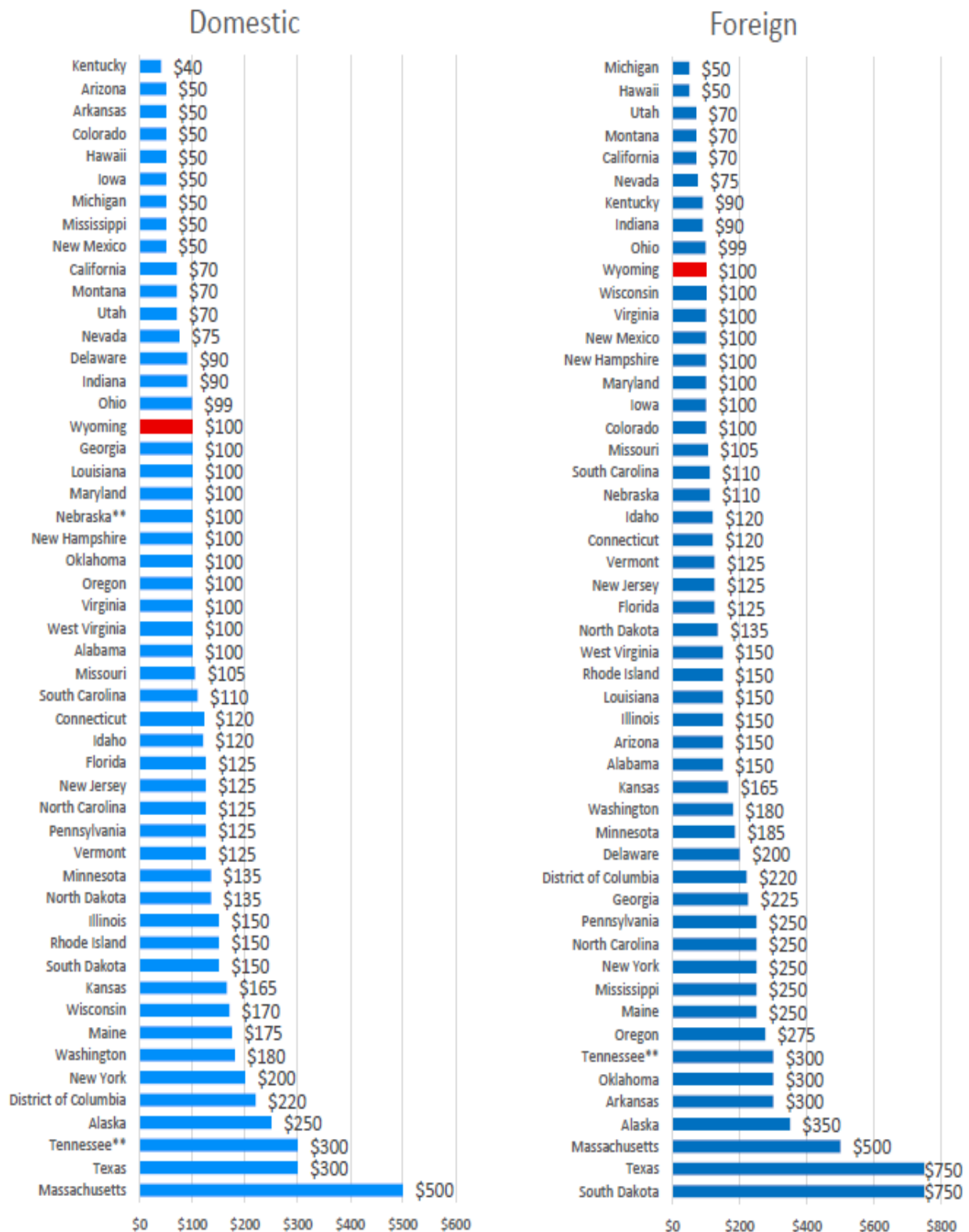
Initial Filing Fee by Surrounding States



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LIMITED LIABILITY COMPANIES

Minimum Initial Filing Fee by State



Annual Report Fees

Current annual report fees vary from \$25 for nonprofit entities to .0002% of the total dollar amount of assets used or employed in Wyoming for those entities with assets in excess of \$250,000. The minimum annual report fee for many entities, including profit corporations and LLCs is currently \$50. Statutory trusts and statutory foundations each pay a flat \$100 annual report fee.

In FY19, the Secretary of State's Office processed 146,370 annual reports from the seven entities required to file an annual report (unincorporated nonprofits and general partnerships do not file annual reports). Of those:

- 126,469 entities (86% of all entities) paid the minimum annual report fee of \$50.
- 13,267 entities paid in excess of \$50.
 - Of those, 205 (14% of all entities) paid \$5,000 or greater.

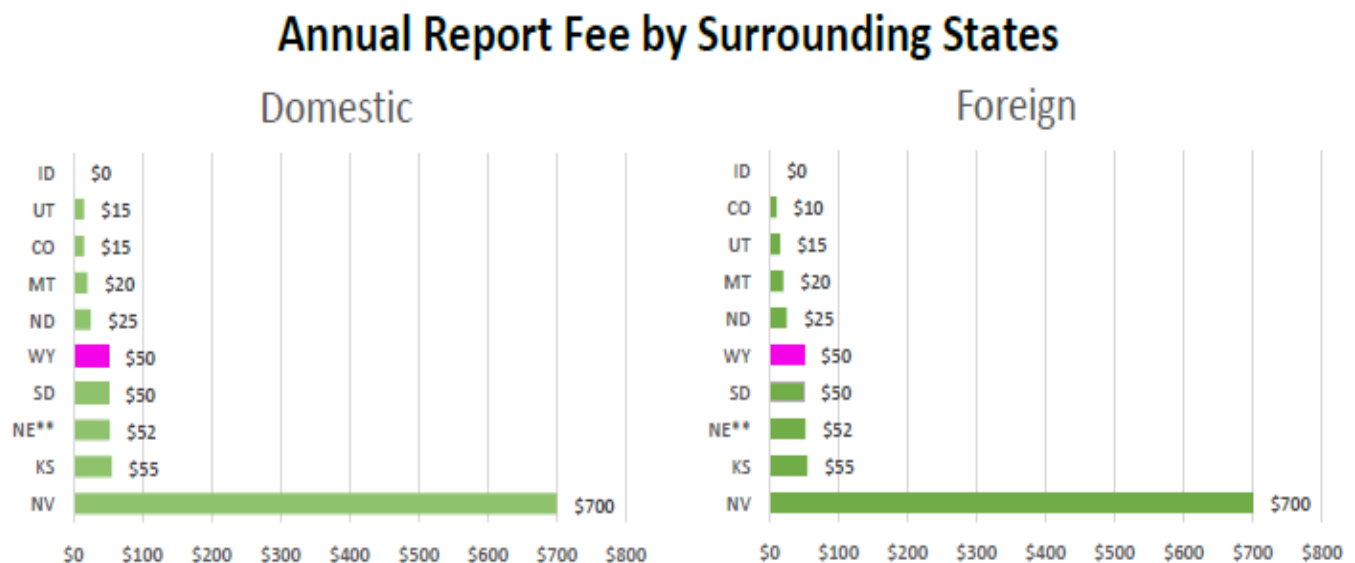
In FY20, the Secretary of State's Office processed annual reports from the same seven entity types. Of those:

- 137,285 entities (87% of all entities) paid the minimum annual report fee of \$50.
- 13,701 entities paid in excess of \$50.
 - Of those, 207 (13% of all entities) paid \$5,000 or greater.

A review of the entities paying \$5,000 or more in annual report fees for FY19 and FY20 indicate that these entities are primarily companies in the mineral industry, companies owning large amounts of land, and national retail or vehicle franchises.

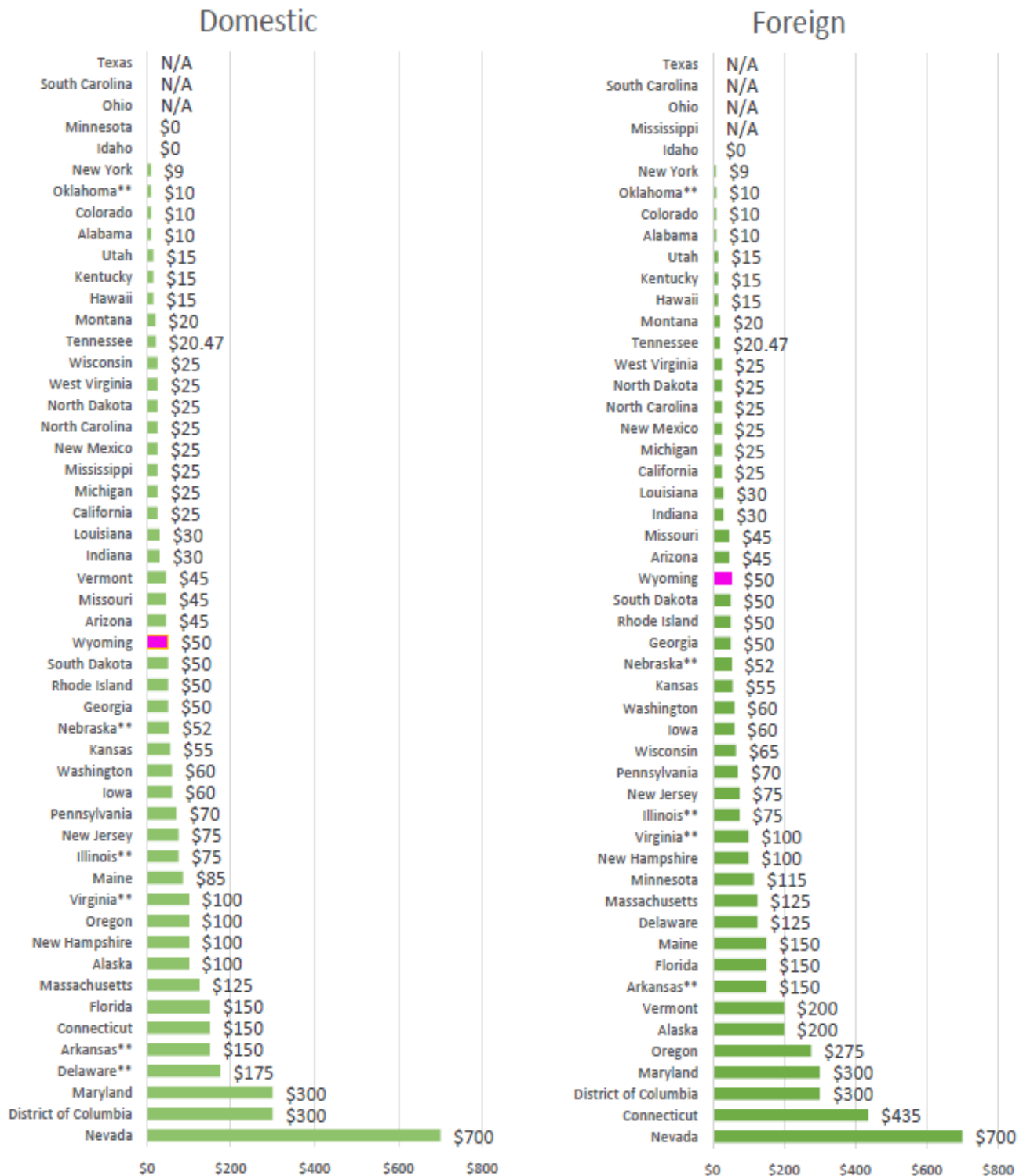
Based on the above, the legislature may want to consider an increase in the minimum annual report fee for most entities from \$50 to \$60. This minimum amount would be paid for entities whose assets located or employed in Wyoming is \$300,000 or less. For those with assets in excess of \$300,000, the annual report fee would remain .0002% of the total assets located or employed in Wyoming. Using the FY20 entities paying the minimum fee, this \$10 per entity increase would represent a revenue increase of \$1,372,850.

PROFIT CORPORATIONS

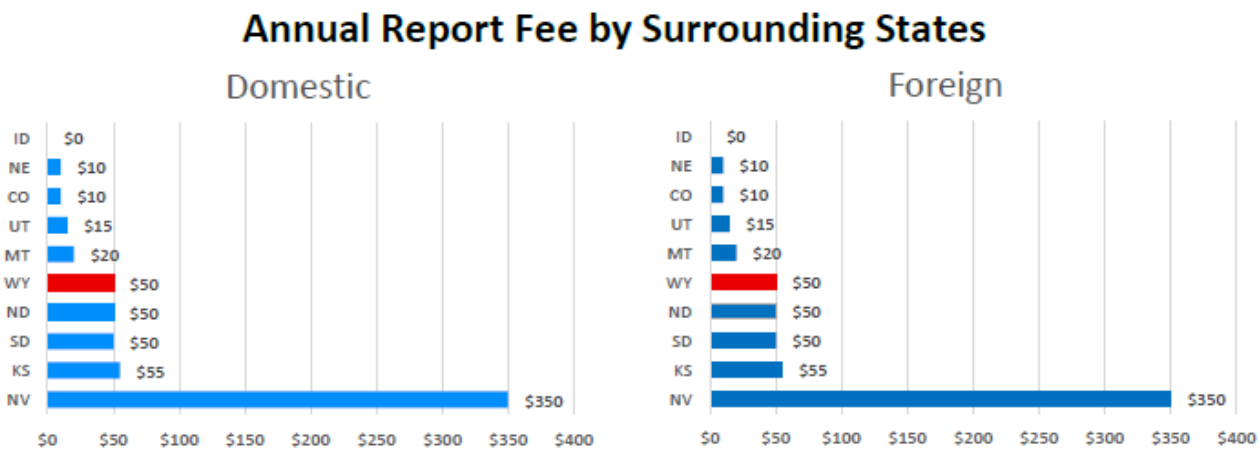


PROFIT CORPORATIONS

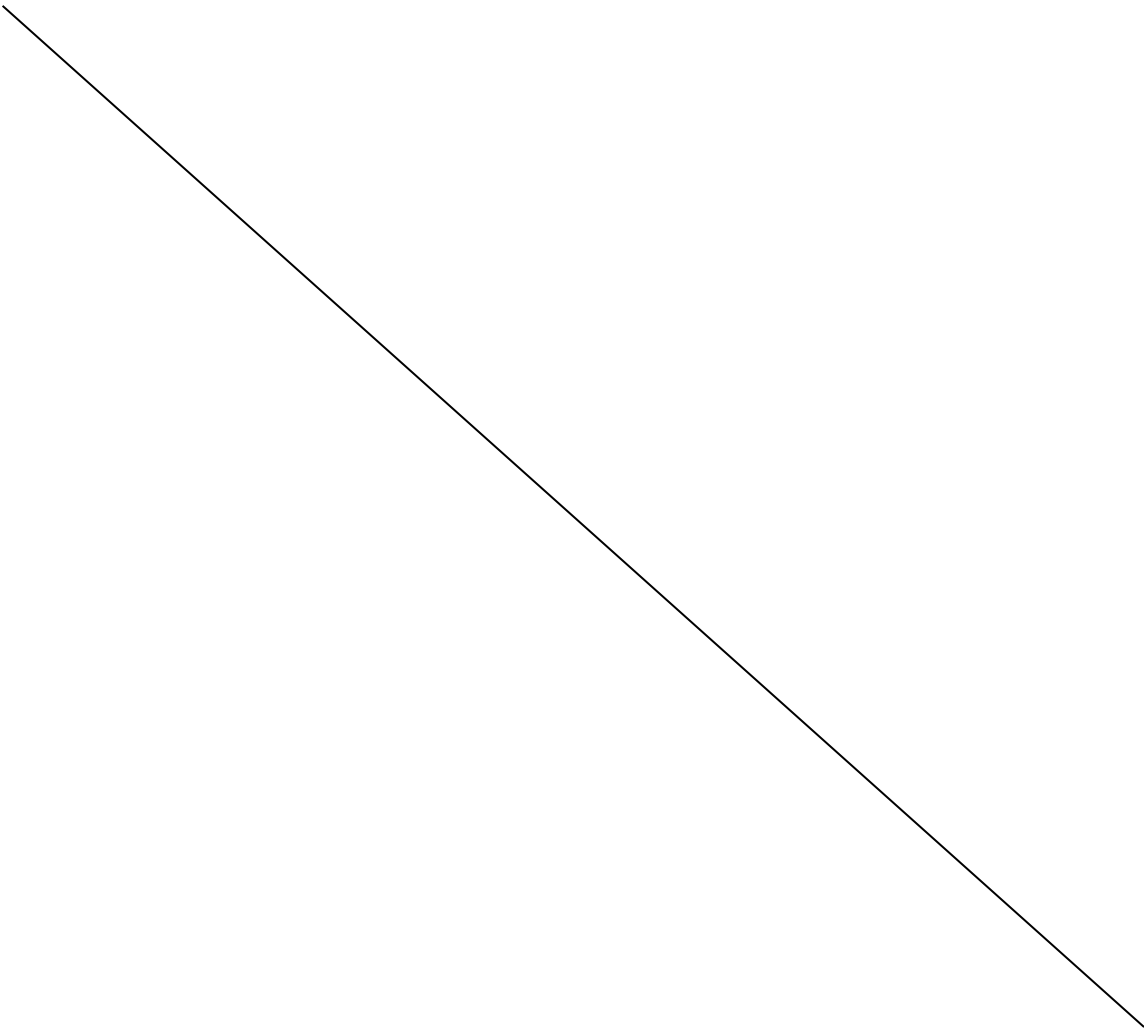
Minimum Annual Report Fee by State



LIMITED LIABILITY COMPANIES

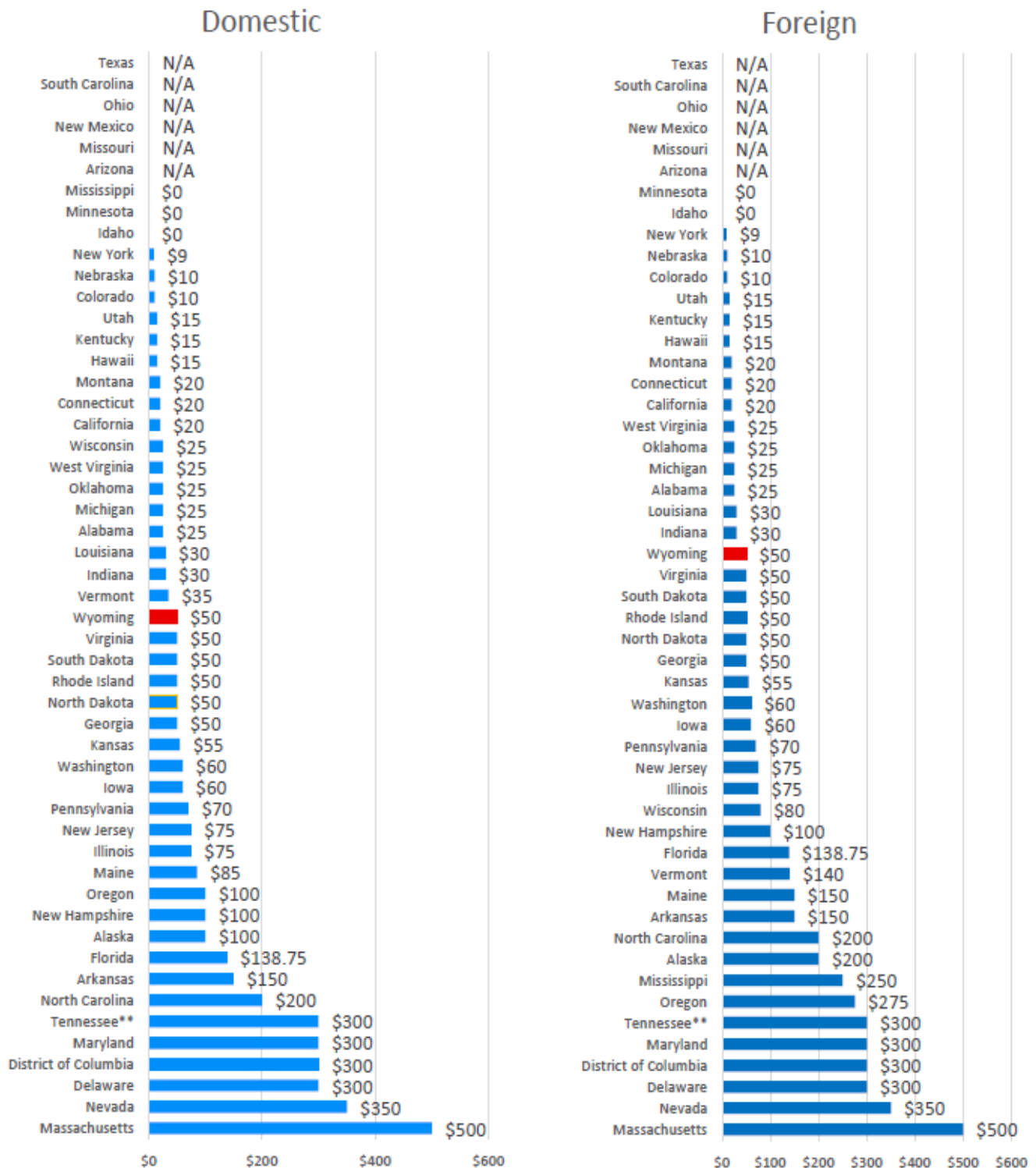


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LIMITED LIABILITY COMPANIES

Minimum Annual Report Fee by State



Trends

To determine statewide trends, we researched the total number of profit corporations and LLCs filed with our Office for a four (4) year period. We selected these two (2) entity types as they are the most frequently filed with our Office.

Profit corporation filing numbers for the last four years are as follows:

2017	7,208
2018	7,302
2019	7,145
2020	8,658

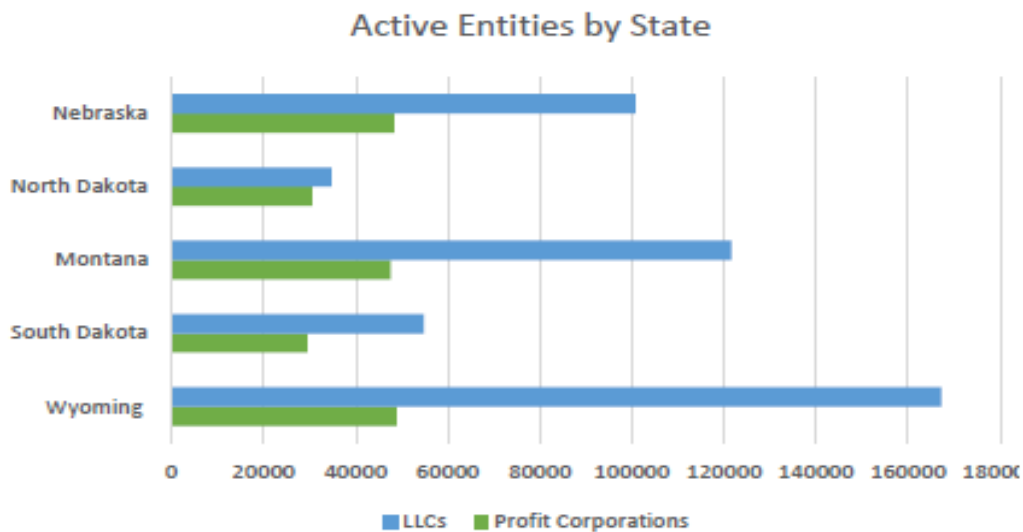
Profit corporation filings have increased 20% from 2017 to 2020.

LLC filing numbers for the last four years are as follows:

2017	30,102
2018	35,923
2019	41,640
2020	56,927

LLC filings have increased 89% from 2017 to 2020.

To determine regional trends, we contacted all our surrounding states to obtain the number of currently active entities in each state. We received responses from South Dakota, Montana, North Dakota and Nebraska.



Wyoming surpasses every reporting state in the numbers of both active profit corporations and LLCs. Wyoming has 3% more profit corporations and 37.5% more LLCs than Montana, our closest competitor.

Amendments

There are a variety of amendments filed for the various entity types. Based upon our FY20 filings, a modest increase in the current filing fee from \$50 to \$60 would result in a \$121,270 revenue increase. The following amendments would be impacted by this change:

- Common Amendments
- Articles of Dissolution
- Certificate of Withdrawal
- Certificate of Transfer
- Fictitious Name Changes
- Mergers of all types
- Name Changes

Similarly, a small increase to amendments for non-profit corporations from \$10 to \$25 would result in a \$2,393 increase in revenue, based upon our FY20 filings. The following amendments would be impacted by this change:

- Non-profit Common Amendments
- Non-profit Certificate of Withdrawal
- Non-profit Articles of Correction
- Non-profit Articles of Dissolution

Reinstatements. Entities who become inactive due to failure to timely file their annual reports currently pay a \$50 reinstatement fee. An entity can reinstate up to two years after they have been administratively dissolved for not filing their annual report. Entities currently have a 60-day grace period in which to pay their delinquent annual report prior to the assessment of the reinstatement fee. Based on our FY20 reinstatements, an increase from \$50 to \$100 would result in a \$504,750 revenue increase.

Trade Names. The legislature may wish to increase the fees charged relative to trade name filings. Once obtained, a trade name remains in effect for 10 years. The suggested changes are as follows:

<u>Filing Type</u>	<u>Current Fee</u>	<u>Proposed Fee</u>
Initial Trade Name	\$100	\$200
Assignment of TN	\$25	\$60
Cancellation of TN	\$10	\$60
Renewal of TN	\$50	\$60

Based on our FY20 trade name filings, this change would result in a \$138,275 revenue increase.

Miscellaneous

Finally, there are a number of miscellaneous changes to fees in our Business Division that were not easily categorized in the areas above. In total, we anticipate a revenue increase of \$315,217 if these changes are adopted.

Series LLCs (SLLC) – The legislature may wish to consider a fee of \$10 be imposed for each series created under the parent LLC. A SLLC will pay a \$100 initial filing fee and can have an unlimited number of series under the parent.

Additionally, the SLLC will file one annual report with a cumulative total of assets in WY for all series under the parent LLC.

In FY20, 115 SLLCs had an annual report due.

- Those 115 represent 2,667 series.
- 111 paid the minimum \$50 annual report fee.
- 4 paid higher than the minimum
 - \$238.29, \$95.25, \$107.00, \$110.04.

Certificates of Good Standing - These can be obtained for free from our website. However, for those entities requesting a paper copy, an increase in the fee from \$10 to \$20 would cover the administrative cost of staff time, paper and mailing.

Certificates of Evidence - An increase in the fee from \$10 to \$20 would cover the administrative cost of staff time, paper and mailing.

Certified Copies of Filings - Copies of filings can be obtained from our website for no cost. For those requiring certification of each document, an increase from \$3 per document to \$10 per document would cover the administrative cost of staff time, paper and mailing.

Changes to Registered Agent, Entity Address & Registered Agent Address - Prior to 2006, there was a \$25 fee to change the registered agent and/or registered office. Each of these filings currently has no fee. In FY20, 52,969 of these changes were processed by business registrars. An increase to \$5 per entity would cover the administrative cost of filing each of these documents.

Non-Resident Motorist Summons - This fee is currently \$3. When our office receives a summons of this nature, we must send it out via certified mail, which costs \$8.80 for postage alone. An increase to \$10 would cover the cost of mailing.

COMPLIANCE DIVISION

The Compliance Division of the Secretary of State's Office is responsible for a variety of duties. These include enforcement of Wyoming's Uniform Securities Act, registration of stockbrokers, investment advisers and notaries public, investor education and the authentication of documents to be used internationally - often referred to as apostilles. During the biennium ending on June 30, 2020, the Compliance Division generated revenue of \$12,965,287. Changes to the fees below would increase revenue by approximately \$60,000.

In reviewing the fees charged by the Compliance Division, we offer the following:

Broker-Dealer Registration Fees: The current fee is \$200. We suggest an increase to \$250 to bring them into parity with Investment Adviser Firms, who already pay \$250 for their registration. All stockbroker, investment advisor representatives and investment advisor firms' fees were raised in 2017 with the rewrite of the Wyoming Uniform Securities Act.

Notary and Apostille fees were previously addressed in the rewrite of Wyoming Notary laws (SF 29, SEA 10) passed by the legislature and signed by the Governor during the 8-day virtual session.

ELECTION DIVISION

The Election Division of the Secretary of State's Office oversees the safe, secure and efficient election process across the 23 counties in Wyoming. They act as a liaison for all county clerks, oversee election equipment, administer Wyoming's election, and register lobbyists wishing to appear before the Wyoming legislature. During the biennium ending on June 30, 2020, the Election Division generated revenue of \$32,450. Changes to the fees below would increase that revenue by approximately \$16,035.

In reviewing the fees charged by the Election Division, the legislature may wish to consider the following:

Lobbyist Registration/Renewal Form - Less than \$500 reimbursement/compensation: This fee is for individuals who specifically lobby the legislature, who do not receive compensation or reimbursement in excess of \$500. Consideration of an increase of the current fee of \$5 to \$10 per session. Based FY20 data, this will impact 107 lobbyists.

Lobbyist Registration/Renewal Form - \$500+ in reimbursement/compensation: This fee is for lobbyists receiving reimbursement or compensation in excess of \$500. Consideration of an increase of the current fee of \$25 to \$75 per legislative session. Based on our last session, this will impact 310 lobbyists.

Closing

The Secretary of State's Office is a revenue generating office. That being said, we are the first to recognize that the multitude of fees we assess for the wide range of statutorily required filings have not been increased for several years, some over 20 years ago. We have taken a long, thoughtful approach to identifying which fees could be increased, while still maintaining our competitive edge in the market of business filings.

The proposed increases will generate, approximately, an additional \$5.5 million dollars in revenue. All revenue generated by this Office goes to the General Fund.