

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 13.1-752, 13.1-768, 13.1-914, 13.1-930, 13.1-1064, and 50-73.69 of the Code of Virginia, relating to corporations, limited liability companies, and limited partnerships; resignation of registered agent and failure to file certificate of change.

[S 207]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-752, 13.1-768, 13.1-914, 13.1-930, 13.1-1064, and 50-73.69 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-752. Automatic termination of corporate existence.

A. If any domestic corporation fails to file the annual report required by this chapter in a timely manner, the Commission shall mail notice to it of impending termination of its corporate existence. Whether or not such notice is mailed, if the corporation fails to file the annual report before the last day of the fourth month immediately following its annual report due date each year, the corporate existence of the corporation shall automatically cease as of that day and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to collect the assets of the corporation; sell, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders; pay, satisfy and discharge its liabilities and obligations; and do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

B. 1. Any domestic corporation shall pay the annual registration fee required by law on or before the corporation's annual report due date determined in accordance with subsection C of § 13.1-775 of each year. If the corporation pays the annual registration fee for the year assessed after such date of that year, the corporation shall incur a penalty of ten percent of the registration fee, or ten dollars, whichever is greater.

2. If any domestic corporation fails to pay by the due date of the year assessed the annual registration fee, the Commission shall mail notice to the corporation of its impending termination of corporate existence. The corporate existence of the corporation shall be automatically terminated if any such fee is unpaid as of the last day of the fourth month immediately following the due date of that year, and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the corporation, (ii) sell, convey and dispose of such of its properties as are not to be distributed in kind to its stockholders, (iii) pay, satisfy and discharge its liabilities and obligations and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its stockholders according to their respective rights and interests.

C. If any domestic corporation whose registered agent has filed with the Commission his statement of resignation pursuant to § 13.1-636 fails to file a statement of change pursuant to § 13.1-635 within thirty-one days after the date on which the statement of resignation was filed, the Commission shall mail notice to the corporation of impending termination of its corporate existence. If the corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending termination notice was mailed, the corporate existence of the corporation shall be automatically terminated as of that day and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed as specified in subdivision B 2 of this section.

§ 13.1-768. Automatic revocation of certificate of authority.

A. If any foreign corporation fails to file the annual report required by this chapter in a timely manner, the Commission shall mail notice to it of impending revocation of its certificate of authority to do business in this Commonwealth. Whether or not such notice is mailed, if the corporation fails to file the annual report before the last day of the fourth month immediately following its annual report due date each year, such foreign corporation shall automatically cease to be authorized to do business in this Commonwealth and its certificate of authority shall be automatically revoked as of that day.

B. 1. Any foreign corporation shall pay the annual registration fee required by law on or before the corporation's annual report due date determined in accordance with subsection C of § 13.1-775 of each year. If the corporation pays the annual registration fee for the year assessed after such date of that year,

57 the corporation shall incur a penalty of ten percent of the registration fee, or ten dollars, whichever is
58 greater.

59 2. If any foreign corporation fails to pay by the due date of the year assessed the annual registration
60 fee, the Commission shall mail notice to the corporation of impending revocation of its certificate of
61 authority. The corporation shall automatically cease to be authorized to do business in this
62 Commonwealth if any such fee is unpaid as of the last day of the fourth month immediately following
63 the due date of that year, and its certificate of authority shall be automatically revoked.

64 *C. If any foreign corporation whose registered agent has filed with the Commission his statement of*
65 *resignation pursuant to § 13.1-765 fails to file a statement of change pursuant to § 13.1-764 within*
66 *thirty-one days after the date on which the statement of resignation was filed, the Commission shall mail*
67 *notice to the corporation of impending revocation of its certificate of authority. If the corporation fails*
68 *to file the statement of change before the last day of the second month immediately following the month*
69 *in which the impending revocation notice was mailed, the corporation shall automatically cease to be*
70 *authorized to transact business in this Commonwealth and its certificate of authority shall be*
71 *automatically revoked as of that day.*

72 § 13.1-914. Automatic termination of corporate existence.

73 A. If any domestic corporation fails to file the annual report required by this chapter in a timely
74 manner, the Commission shall mail notice to it of impending termination of its corporate existence.
75 Whether or not such notice is mailed, if the corporation fails to file the annual report before the last day
76 of the fourth month immediately following its annual report due date each year, the corporate existence
77 of such corporation shall automatically cease as of that day and its properties and affairs shall pass
78 automatically to its directors as trustees in liquidation. The trustees shall then proceed to collect the
79 assets of the corporation, and pay, satisfy and discharge its liabilities and obligations and do all other
80 acts required to liquidate its business. After paying or adequately providing for the payment of all its
81 obligations, the trustees shall distribute the remainder of its assets in accordance with § 13.1-907.

82 B. 1. Any domestic corporation shall pay the annual registration fee required by law on or before the
83 corporation's annual report due date determined in accordance with subsection C of § 13.1-936 of each
84 year. If the corporation pays the annual registration fee for the year assessed after such date of that year,
85 the corporation shall incur a penalty of ten dollars.

86 2. If any domestic corporation fails to pay by the due date of the year assessed the annual
87 registration fee, the Commission shall mail notice to the corporation of impending termination of its
88 corporate existence. The corporate existence of the corporation shall be automatically terminated if any
89 such fee is unpaid as of the last day of the fourth month immediately following the due date of that
90 year, and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The
91 trustees shall then proceed to collect the assets of the corporation, and pay, satisfy and discharge its
92 liabilities and obligations and do all other acts required to liquidate its business. After paying or
93 adequately providing for the payment of all of its obligations, the trustees shall distribute the remainder
94 of its assets in accordance with § 13.1-907.

95 *C. If any domestic corporation whose registered agent has filed with the Commission his statement*
96 *of resignation pursuant to § 13.1-835 fails to file a statement of change pursuant to § 13.1-834 within*
97 *thirty-one days after the date on which the statement of resignation was filed, the Commission shall mail*
98 *notice to the corporation of impending termination of its corporate existence. If the corporation fails to*
99 *file the statement of change before the last day of the second month immediately following the month in*
100 *which the impending termination notice was mailed, the corporate existence of the corporation shall be*
101 *automatically terminated as of that day and its properties and affairs shall pass automatically to its*
102 *directors as trustees in liquidation. The trustees shall then proceed as specified in subdivision B 2 of*
103 *this section.*

104 § 13.1-930. Automatic revocation of certificate of authority.

105 A. If any foreign corporation fails to file the annual report required by this chapter in a timely
106 manner, the Commission shall mail notice to it of impending revocation of its certificate of authority to
107 transact business in this Commonwealth. Whether or not such notice is mailed, if the corporation fails to
108 file the annual report before the last day of the fourth month immediately following its annual report
109 due date each year, the foreign corporation shall automatically cease to be authorized to transact
110 business in this Commonwealth and its certificate of authority shall be automatically revoked as of that
111 day.

112 B. 1. Any foreign corporation shall pay the annual registration fee required by law on or before the
113 corporation's annual report due date determined in accordance with subsection C of § 13.1-936 of each
114 year. If the corporation pays the annual registration fee for the year assessed after such date of that year,
115 the corporation shall incur a penalty of ten dollars.

116 2. If any foreign corporation fails to pay by the due date of the year assessed the annual registration
117 fee, the Commission shall mail notice to the corporation of impending revocation of its certificate of

authority. The corporation shall automatically cease to be authorized to do business in this Commonwealth if any such fee is unpaid as of the last day of the fourth month immediately following the due date of that year, and its certificate of authority shall be automatically revoked.

C. If any foreign corporation whose registered agent has filed with the Commission his statement of resignation pursuant to § 13.1-927 fails to file a statement of change pursuant to § 13.1-926 within thirty-one days after the date on which the statement of resignation was filed, the Commission shall mail notice to the corporation of impending revocation of its certificate of authority. If the corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending revocation notice was mailed, the corporation shall automatically cease to be authorized to transact business in this Commonwealth and its certificate of authority shall be automatically revoked as of that day.

§ 13.1-1064. Penalty for failure to timely pay annual registration fees or file statement of change.

A. Any domestic or any foreign limited liability company failing to pay the annual registration fee into the state treasury within the time prescribed in § 13.1-1062 shall incur a penalty thereon of twenty-five dollars which shall be added to the amount of the annual registration fee due. The penalty prescribed herein shall be in addition to any other penalties and liabilities imposed by law.

B. 1. If any domestic or foreign limited liability company fails to pay on or before October 1 of the year assessed the annual registration fee, the Commission shall mail notice to the limited liability company of impending cancellation of its certificate of organization or certificate of registration, as the case may be. The certificate shall be automatically canceled if any annual registration fee is unpaid as of December 31 of that year. A domestic limited liability company whose certificate has been canceled pursuant to this section is dissolved upon cancellation and shall be wound up pursuant to Article 9 (§ 13.1-1046 et seq.) of this chapter.

2. *If any domestic or foreign limited liability company whose registered agent has filed with the Commission his statement of resignation pursuant to § 13.1-1017 fails to file a statement of change pursuant to § 13.1-1016 within thirty-one days after the date on which the statement of resignation was filed, the Commission shall mail notice to the limited liability company of impending cancellation of its certificate of organization or certificate of registration, as the case may be. If the limited liability company fails to file the statement of change before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the certificate shall be automatically canceled as of that day. A domestic limited liability company whose certificate has been canceled pursuant to this section is dissolved upon cancellation and shall be wound up pursuant to Article 9 (§ 13.1-1046 et seq.) of this chapter.*

C. No member, manager or other agent of a limited liability company shall have any personal obligation for any liabilities of the limited liability company, whether such liabilities arise in contract, tort or otherwise, solely by reason of the failure or refusal of that limited liability company to pay the annual registration fee or by reason of the cancellation of the limited liability company's certificate of organization or certificate of registration, as applicable, pursuant to subsection B of this section.

D. A domestic or foreign limited liability company whose certificate of organization or certificate of registration has been canceled pursuant to subsection B of this section may be relieved of the cancellation, and its certificate of organization or certificate of registration shall be reinstated by paying, not later than two years following the date of cancellation, the annual registration fee required by § 13.1-1062, together with the late fee imposed by subsection A of this section; a reinstatement fee of \$100; and all registration fees and penalties that were due before the certificate was canceled and would have become due had the certificate not been canceled. If the name of the limited liability company is not available at the time of reinstatement, as a precondition to reinstatement the limited liability company, if domestic, shall file an amendment to its articles of organization to change its name, or if foreign, shall adopt a designated name, to satisfy the requirements of § 13.1-1012.

E. If the domestic or foreign limited liability company complies with the provision of, and pays the fees required by, subsection D of this section, the Commission shall reinstate the certificate of organization or certificate of registration of the limited liability company. A domestic or foreign limited liability company whose certificate of organization or certificate of registration is reinstated within two years after the date on which it was canceled pursuant to subsection B of this section shall be deemed not to have had its certificate of organization or certificate of registration canceled. In that event, the reinstated domestic or foreign limited liability company resumes carrying on its business as if neither cancellation nor dissolution had ever occurred, and any liability incurred by that domestic or foreign limited liability company or a member, manager or other agent after the cancellation and before the reinstatement is determined as if cancellation had never occurred.

§ 50-73.69. Penalty for failure to timely pay annual registration fee or file statement of change.

A. Any domestic or any foreign limited partnership failing to pay the annual registration fee into the state treasury within the time prescribed in § 50-73.67 shall incur a penalty thereon of twenty-five

dollars which shall be added to the amount of the annual registration fee due. The penalty prescribed herein shall be in addition to any other penalties and liabilities imposed by law.

B. 1. If any domestic or foreign limited partnership fails to pay on or before October 1 of the year assessed the annual registration fee, the Commission shall mail notice to the limited partnership of impending cancellation of its certificate of limited partnership or certificate of registration, as the case may be. The certificate shall be automatically canceled if any annual registration fee is unpaid as of December 31 of that year. A domestic limited partnership whose certificate has been canceled pursuant to this section is dissolved upon cancellation and shall be wound up pursuant to Article 8 (§ 50-73.49 et seq.) of this chapter.

2. *If any domestic or foreign limited partnership whose registered agent has filed with the Commission his statement of resignation pursuant to § 50-73.6 fails to file a statement of change pursuant to § 50-73.5 within thirty-one days after the date on which the statement of resignation was filed, the Commission shall mail notice to the limited partnership of impending cancellation of its certificate. If the limited partnership fails to file the statement of change as of the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the certificate shall be automatically canceled as of that day. A domestic limited partnership whose certificate has been canceled pursuant to this section is dissolved upon cancellation and shall be wound up pursuant to Article 8 (§ 50-73.49 et seq.) of this chapter.*

C. A limited partner of a domestic or foreign limited partnership is not liable as a general partner of that domestic or foreign limited partnership solely by reason of the failure or refusal of that limited partnership to pay the annual registration fee or by reason of the cancellation of the limited partnership's certificate of limited partnership or certificate of registration, as applicable, pursuant to subsection B of this section.

D. A domestic or foreign limited partnership whose certificate of limited partnership or certificate of registration has been canceled pursuant to either subsection B of this section or § 50-73.13 or § 50-73.58 may be relieved of the cancellation, and its certificate of limited partnership or certificate of registration shall be reinstated by paying, not later than two years following the date of cancellation, the annual registration fee required by § 50-73.67, together with any late fee imposed by subsection A of this section; a reinstatement fee of \$100; and all registration fees and penalties that were due before the certificate was canceled and would have become due had the certificate not been canceled. If the name of the limited partnership is not available at the time of reinstatement, the limited partnership shall file an amendment to its certificate of limited partnership or certificate of registration or adopt an assumed name for use in this Commonwealth as a precondition to reinstatement.

E. If the domestic or foreign limited partnership complies with the provisions of, and pays the fees required by, subsection D of this section, the Commission shall reinstate the certificate of limited partnership or certificate of registration of the limited partnership. A domestic or foreign limited partnership whose certificate of limited partnership or certificate of registration is reinstated within two years after the date on which it was canceled pursuant to subsection B of this section shall be deemed not to have had its certificate of limited partnership or certificate of registration canceled. In that event, the reinstated domestic or foreign limited partnership resumes carrying on its business as if neither cancellation nor dissolution had ever occurred, and any liability incurred by that domestic or foreign limited partnership or a partner after the cancellation and before the reinstatement is determined as if cancellation had never occurred.

2. That the provisions of this act shall apply to any domestic or foreign corporation, domestic or foreign limited liability company, or domestic or foreign limited partnership whose registered agent files a certificate of resignation with the State Corporation Commission pursuant to §§ 13.1-636, 13.1-765, 13.1-835, 13.1-927, 13.1-1017, or § 50-73.6 of the Code of Virginia on or after January 1, 2001.