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SENATE BILL NO. 326

Offered January 19, 2000

A BILL to amend and reenact §§ 12.1-43, 13.1-1003, 50-73.128, 50-73.131, and 50-73.136 of the Code of Virginia, relating to the delivery to, and filing and amendment of organizational and other documents by, business entities; State Corporation Commission.

Patron—Wampler

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 12.1-43, 13.1-1003, 50-73.128, 50-73.131, and 50-73.136 of the Code of Virginia are amended and reenacted as follows:

§ 12.1-43. Tax assessments, registration fee assessments, report forms, and correspondence mailed by Commission deemed delivered.

Tax assessments, *registration fee assessments*, report forms, and correspondence directed to a corporation, *limited liability company, limited partnership or registered limited liability partnership* and mailed by the Commission by first-class mail addressed to the registered agent of the corporation, *limited liability company or registered limited liability partnership* at its registered office *or to the registered agent of the limited partnership* shall be deemed to have been delivered to the ~~corporation~~ entity.

If the corporation, *limited liability company, limited partnership or registered limited liability partnership* has no registered agent, such mailing shall be deemed to have been delivered to the ~~corporation~~ entity when mailed by the Commission by first-class mail addressed to *the entity at its principal or specified office address, as the case may be, or when mailed or delivered in person to, any director, the president, vice-president, or secretary or any equivalent officer* of the corporation, *any member or manager of the limited liability company, or any general partner of the limited partnership or registered limited liability partnership*. The names and addresses of such ~~officers~~ *persons and the principal and specified office addresses* on record with the Commission shall be conclusive for the purposes of this section.

§ 13.1-1003. Filing requirements.

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this chapter requires or permits to be filed with the Commission.

C. The document shall contain the information required by this chapter. It may contain other information as well.

D. The document shall be typewritten or printed. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals. The articles of organization, duly authenticated by the official having custody of the applicable records in the state or country under whose law the limited liability company is formed, which are required of foreign limited liability companies, need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be executed in the name of the limited liability company:

1. By any manager *or other person who has been delegated the right and power to manage the business and affairs of the limited liability company*, or if no managers *or such other persons* have been selected, by any member of the limited liability company;

2. If the limited liability company has not been formed, by the person forming the limited liability company; or

3. If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. Any signature may be a facsimile.

H. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

I. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee and any registration fee required by this chapter.

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60 J. The Commission may accept the electronic filing of any information required or permitted to be
61 filed by this chapter and may prescribe the methods of execution, recording, reproduction and
62 certification of electronically filed information.

63 § 50-73.128. Merger of partnerships.

64 A. Pursuant to a written plan of merger approved as provided in subsection C, a partnership may be
65 merged with one or more domestic or foreign partnerships, limited partnerships, limited liability
66 companies or corporations if:

67 1. The merger is not prohibited by the partnership agreement of any domestic partnership that is a
68 party to the merger, and each domestic partnership party to the merger approves the plan of merger in
69 accordance with subsection C of this section and complies with the terms of its partnership agreement;

70 2. Each domestic limited partnership that is a party to the merger complies with the applicable
71 provisions of Article 7.1 (§ 50-73.48:1 et seq.) of Chapter 2.1 of Title 50;

72 3. Each domestic limited liability company that is a party to the merger complies with the applicable
73 provisions of Article 13 (§ 13.1-1070 et seq.) of Chapter 12 of Title 13.1;

74 4. Each domestic corporation that is a party to the merger complies with the applicable provisions of
75 Article 12 (§ 13.1-716 et seq.) of Chapter 9 or Article 11 (§ 13.1-894 et seq.) of Chapter 10 of Title
76 13.1; and

77 5. The merger is permitted by the laws under which each foreign limited liability company, foreign
78 partnership, foreign limited partnership and foreign corporation party to the merger is organized, formed
79 or incorporated, and each such foreign limited liability company, partnership, limited partnership or
80 corporation complies with those laws in effecting the merger.

81 B. The plan of merger shall set forth:

82 1. The name of each partnership, limited partnership, limited liability company or corporation that is
83 a party to the merger;

84 2. The name of the surviving entity into which the other partnerships, limited partnerships, limited
85 liability companies or corporations will merge;

86 3. Whether the surviving entity is a partnership, a limited partnership, a limited liability company or
87 a corporation and the status of each partner;

88 4. The terms and conditions of the merger;

89 5. The manner and basis of converting the interests of each party to the merger into interests or
90 obligations of the surviving entity, or into money or other property in whole or part; and

91 6. The street address of the surviving entity's chief executive office.

92 C. The plan of merger shall be approved:

93 1. In the case of a partnership that is a party to the merger, by all of the partners, or a number or
94 percentage specified for merger in the partnership agreement; and

95 2. In the case of a limited partnership that is a party to the merger, by the vote required for approval
96 of a merger by the law of the State or foreign jurisdiction in which the limited partnership is organized
97 and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a
98 provision to the contrary in the partnership agreement.

99 D. After a plan of merger is approved and before the merger takes effect, the plan may be amended
100 or abandoned as provided in the plan.

101 E. The merger takes effect on the later of:

102 1. The approval of the plan of merger by all parties to the merger, as provided in subsection C;

103 2. The filing of all documents required by law to be filed as a condition to the effectiveness of the
104 merger; or

105 3. Any later effective date stated pursuant to subsection J of § ~~50-73.85~~ 50-73.83 in a statement of
106 merger filed pursuant to § 50-73.131 or, if no statement of merger is filed, any effective date specified
107 in the plan of merger.

108 § 50-73.131. Statement of merger.

109 A. After a merger, the surviving partnership or limited partnership may file a statement that one or
110 more partnerships or limited partnerships have merged into the surviving entity; but if a partnership or
111 limited partnership that is a party to the merger has, before the effective date of the merger, filed a
112 statement or certificate with the Commission under this title, a statement of merger shall be filed.

113 B. A statement of merger shall contain:

114 1. The name of each partnership or limited partnership that is a party to the merger;

115 2. The name of the surviving entity into which the other partnerships or limited partnership were
116 merged;

117 3. The street address of the surviving entity's chief executive office and of an office in this
118 Commonwealth, if any; and

119 4. Whether the surviving entity is a partnership or a limited partnership.

120 C. Except as otherwise provided in subsection D, for the purposes of § 50-73.92, property of the
121 surviving partnership or limited partnership which before the merger was held in the name of another

party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

D. For the purposes of § 50-73.92, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

E. A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to subsection C of § ~~50-73.85~~ 50-73.83, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection B, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections C and D.

§ 50-73.136. Amendment of statement of registration; effect of statement of registration.

A. Notwithstanding the provisions of subsection D or any other provision of this chapter, the status of a partnership as a registered limited liability partnership or a foreign registered limited liability partnership, and the liability of the partners thereof, shall not be affected by (i) errors in the information stated in the statement of registration, if the statement was filed in good faith, or (ii) changes after the filing of a statement of registration in the information stated in the statement.

B. A statement of registration or any amendment thereto may also serve as a statement of partnership authority under § 50-73.93, a statement of denial under § 50-73.94, a statement of dissociation under § 50-73.115, or a statement of dissolution under § 50-73.121 if (i) the title of the statement indicates each purpose for which it is filed and (ii) if the statement of registration otherwise meets the requirements of the particular other statement and, to the extent that it serves as such an other statement, it may be amended, canceled or limited, in accordance with §§ 50-73.93, 50-73.94, 50-73.115 and 50-73.121, but any amendment, cancellation or limitation shall not affect the validity of the statement of registration of the partnership as a registered limited liability partnership, which may be amended only as provided in § 50-73.136 or canceled in accordance with § 50-73.137.

C. The filing of a statement of registration shall be conclusive as to third parties, and it shall be incontestable by third parties that all conditions precedent to registration as a registered limited liability partnership or foreign registered limited liability partnership have been met.

D. A statement of registration for a registered limited liability partnership or foreign limited liability partnership is amended by filing an amendment thereto with the Commission. The amendment shall set forth: the name of the registered limited liability partnership or foreign registered limited liability partnership, the date of filing of the initial statement of registration; in the case of a foreign registered limited liability partnership, the jurisdiction in which it is registered as a limited liability partnership; and the amendment to the statement of registration. An amendment to the statement of registration shall be filed by a registered limited liability partnership or foreign registered limited liability partnership not later than thirty days after (i) a change in the name of the partnership; ~~(ii) a change in the address of the principal office of the partnership;~~ or ~~(iii)~~(ii) the partnership has knowledge that a material statement in the statement of registration was false or inaccurate when made or that any facts described therein have changed, making the statement of registration inaccurate in any material respect. An amendment to the statement of registration may be filed for any other proper purpose. Unless otherwise provided in this chapter or in the amendment to the statement of registration, an amendment to a statement of registration shall be effective at the time of its filing with the Commission.