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SENATE BILL NO. 244

Offered January 9, 2002

Prefiled January 8, 2002

A *BILL to amend and reenact §§ 50-73.11:2, 50-73.15, 50-73.17, 50-73.54, 50-73.56, 50-73.67, 50-73.70, 50-73.83, 50-73.93, 50-73.132, 50-73.134, and 50-73.138 of the Code of Virginia and to repeal § 50-73.11:1 of the Code of Virginia, relating to partnership law; the Virginia Revised Uniform Limited Partnership Act and the Virginia Uniform Partnership Act.*

Patron—Wampler

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 50-73.11:2, 50-73.15, 50-73.17, 50-73.54, 50-73.56, 50-73.67, 50-73.70, 50-73.83, 50-73.93, 50-73.132, 50-73.134, and 50-73.138 of the Code of Virginia are amended and reenacted as follows:

§ 50-73.11:2. Effect of conversion; entity unchanged.

A. A general partnership that has been converted pursuant to *former* § 50-73.11:1 shall be deemed for all purposes the same entity that existed before the conversion.

B. When a conversion takes effect:

1. All property owned by the converting general partnership remains vested in the converted entity;

2. All obligations of the converting general partnership continue as obligations of the converted entity; and

3. An action or proceeding pending against the converting general partnership may be continued as if the conversion had not occurred.

§ 50-73.15. Execution of certificates.

A. Each certificate required or permitted by this article to be filed as specified in §§ 50-73.11 through 50-73.13 and articles of merger referred to in § 50-73.48:3 shall be executed in the following manner:

1. An initial certificate of limited partnership and an amended and restated certificate of limited partnership pursuant to § 50-73.77 shall be signed by all general partners;

2. A certificate of amendment shall be signed by (i) at least one general partner and by each other general partner designated in the certificate as a new general partner or (ii) after the dissolution of a limited partnership but before the filing of a certificate of cancellation as provided in § 50-73.13, if all general partners have withdrawn or if the general partners named in the certificate of limited partnership are not winding up the affairs of the limited partnership, each liquidating trustee;

3. A certificate of cancellation shall be signed by all general partners, or, if the general partners are not winding up the affairs of the limited partnership, then by all liquidating trustees or a majority of the limited partners; and

4. The articles of merger shall be signed by at least one general partner.

B. *Every person executing a document shall sign it and state beneath or opposite his signature his name and the capacity in which he executes the document. Any signature may be a facsimile.* Any person may sign a certificate by an attorney-in-fact.

C. The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

D. The acknowledgment before July 1, 1981, of a certificate or amended certificate of limited partnership, not false or misleading in any material respect, shall be deemed substantial compliance in good faith with any requirement that the certificate or amended certificate be signed or sworn to. The provisions of this subsection shall not apply to any litigation, pending or decided, on or before the effective date hereof.

§ 50-73.17. Filing; fees.

A. 1. One signed copy of the certificate of limited partnership, of any certificate of amendment or cancellation, of any restated certificate of limited partnership or of any articles of merger shall be delivered to the Commission for filing and shall be accompanied by the required filing fee. One signed copy of any amended and restated certificate referred to in § 50-73.77 plus one photocopy for each circuit court where the certificate of limited partnership was originally filed shall be delivered to the Commission for filing and shall be accompanied by the required filing fee. ~~The certificate shall be in the English language and~~

2. *Any document delivered to the Commission for filing shall be typewritten or printed in black ink.* Photocopies, or other reproduced copies, of typewritten or printed certificates may be filed. In every

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59 case, information in the document shall be legible and the document shall be capable of being
60 reformatted and reproduced in copies of archival quality.

61 3. *The document shall be in the English language. A limited partnership name need not be in*
62 *English if written in English letters or Arabic or Roman numerals. The certificate of limited partnership*
63 *or partnership agreement, duly authenticated by the official having custody of the applicable records in*
64 *the state or other jurisdiction under whose law the limited partnership is formed, which is required of*
65 *foreign limited partnerships, need not be in English if accompanied by a reasonably authenticated*
66 *English translation.*

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

69 5. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his
70 authority as a prerequisite to filing. If the Commission finds that the certificate complies with the
71 provisions of this chapter, that it has been signed as required by this chapter, and that the required filing
72 fee has been paid, it shall endorse on the certificate the word "Filed" and the day, month and year of the
73 filing thereof and admit the certificate to record in its office. A signature on any document filed under
74 this chapter may be a facsimile.

75 6. The Commission may accept the electronic filing of any information required or permitted to be
76 filed by this chapter and may prescribe the methods of execution, recording, reproduction and
77 certification of electronically filed information pursuant to § 59.1-496.

78 B. Upon the filing with the Commission of a certificate of amendment, the certificate of limited
79 partnership shall be amended as set forth therein, and upon the effective date of a certificate of
80 cancellation the certificate of limited partnership is canceled.

81 C. The Commission shall charge and collect the following fees:

82 1. For filing any one of the following, the fee shall be ten dollars:

83 a. An application to reserve or to renew the reservation of a name for use by a domestic or a foreign
84 limited partnership;

85 b. A notice of the transfer of a name reserved for the use by a domestic or a foreign limited
86 partnership;

87 c. A certificate of cancellation with respect to either a domestic or a foreign limited partnership;

88 d. A certificate declaring withdrawal referred to in § 50-73.25;

89 e. A certificate of correction referred to in § 50-73.57;

90 f. An instrument of merger referred to in § 50-73.57:2.

91 2. For filing any one of the following, the fee shall be \$100:

92 a. A certificate of limited partnership referred to in § 50-73.11 or § 50-73.11:1;

93 b. An application for registration as a foreign limited partnership;

94 c. An amended and restated certificate of limited partnership referred to in § 50-73.77.

95 3. For filing any one of the following, the fee shall be fifty dollars:

96 a. A certificate of amendment or a short form of such certificate;

97 b. A restated certificate of limited partnership.

98 4. For filing articles of merger referred to in § 50-73.48:3, the fee shall be twenty-five dollars.

99 5. For issuing a certificate pursuant to ~~§ 50-37.3~~ 50-73.130, the fee shall be six dollars.

100 § 50-73.54. Registration.

101 Before transacting business in this Commonwealth, a foreign limited partnership shall register with
102 the Commission. In order to register, a foreign limited partnership shall deliver to the Commission an
103 application for registration as a foreign limited partnership on forms prescribed and furnished by the
104 Commission, executed by a general partner and setting forth:

105 1. The name of the foreign limited partnership and, if ~~different~~, the limited partnership is prevented
106 by § 50-73.56 from using its own name in this Commonwealth, a designated name under which it
107 proposes to register and transact business in this Commonwealth that satisfies the requirements of
108 § 50-73.56;

109 2. The state or other jurisdiction and date of its formation;

110 3. ~~[Repealed.]~~

111 4 3. The registered agent's name, qualification as prescribed in subdivision A. 2. of § 50-73.4, and
112 post-office address of the registered agent and the post-office address of the specified office required to
113 be maintained by ~~§ 50-73.4~~, including the street and number, if any, and the name of the city or county
114 in which each office the address is located;

115 5 4. A statement that the Clerk of the Commission is irrevocably appointed the agent of the foreign
116 limited partnership for service of process if no registered agent has been appointed under § 50-73.4 or, if
117 appointed, the registered agent's authority has been revoked or if the registered agent either has resigned
118 or cannot be found or served with the exercise of reasonable diligence;

119 6 5. The address of the office required to be maintained in the state or other jurisdiction of its
120 formation by the laws of that state or jurisdiction or, if not so required, of the principal office of the

foreign limited partnership;

7 6. A copy of the *certificate of limited partnership* or, if there is no such certificate, a copy of the partnership agreement, filed in the foreign limited partnership's state or other jurisdiction of formation authorizing it to do business in that state or other jurisdiction, duly authenticated by the ~~proper officer~~ *secretary of state or other official having custody of the limited partnership records* in the state or other jurisdiction of its formation;

8 7. The name and post-office address, including the street and number, if any, of each general partner; and

9 8. The post-office address, including the street and number, if any, of the *specified* office *required to be maintained by § 50-73.4*, at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this Commonwealth is cancelled or withdrawn.

§ 50-73.56. Name.

A. *No certificate of registration shall be issued to a foreign limited partnership may register with the Commission under any name, whether or not it is the name under which it is registered in its state or other jurisdiction of formation, that includes the words "limited partnership" or "a limited partnership," or the abbreviation "L.P." and that could be used or reserved by a domestic limited partnership unless the name of such limited partnership satisfies the requirements of § 50-73.2. If the name of a limited partnership does not satisfy the requirements of § 50-73.2, in order to obtain or maintain a certificate of registration:*

1. *The foreign limited partnership may add to its name for use in this Commonwealth the words "limited partnership" or "a limited partnership," or the abbreviation "L.P." or "LP," or, in the case of a limited partnership that is also registered as a foreign limited liability partnership in Virginia, a word, abbreviation or designation to bring its name into compliance with the requirements of clause (ii) of subdivision A. 2. of § 50-73.78; or*

2. *If its real name is unavailable, the foreign limited partnership may use a designated name that is available and that satisfies the requirements of § 50-73.2 if it informs the Commission of the designated name.*

B. No foreign limited partnership registered with the Commission under this article which is conducting or transacting business in this Commonwealth under the *designated* name of the partnership set forth in the application for registration filed pursuant to § 50-73.54, nor any partner of that limited partnership, shall be required to file any assumed or fictitious name or comparable certificate solely for such conduct or transaction of partnership business.

C. *A foreign limited partnership that is registered with the Commission prior to July 1, 2002, under a name other than the name under which it is registered in its state or other jurisdiction of formation may continue to be so registered until the name in its application for registration is amended or its certificate of registration is canceled.*

§ 50-73.67. Annual registration fees to be paid by domestic and foreign limited partnerships.

Every domestic limited partnership, and every foreign limited partnership registered to transact business in this Commonwealth, shall pay into the state treasury on or before September 1 in each year after the calendar year in which it was formed or registered to transact business in this Commonwealth an annual registration fee of fifty dollars.

The fees paid into the state treasury under this section and the fees collected under ~~subdivisions 1, 2 and 3 of subsection C of § 50-73.17~~ shall be set aside and paid into the special fund created under § 13.1-775.1, and shall be used only by the Commission as it deems necessary to defray the costs of the Commission and of the office of the Clerk of the Commission in supervising, implementing, administering and enforcing the provisions of this chapter. The projected excess of fees collected over the costs of administration and enforcement so incurred shall be paid into the general fund prior to the close of each fiscal year, based on the unexpended balance of the special fund at the end of the prior fiscal year. An adjustment of this transfer amount to reflect actual fees collected shall occur during the first quarter of the succeeding fiscal year.

§ 50-73.70. Payment of fees, fines, penalties, and interest prerequisite to Commission action.

The Commission shall not file or issue with respect to any domestic or any foreign limited partnership any certificate referred to in this chapter until all fees, *fines, penalties, and interest assessed, imposed, charged or to be collected by the Commission under pursuant to this chapter or Title 12.1* have been paid by or on behalf of such limited partnership.

§ 50-73.83. Execution, filing, and recording of statements.

A. A statement may be filed with the Commission. A duly authenticated copy of a statement that is filed in an office in another state may be filed with the Commission. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this

182 Commonwealth.

183 B. A duly authenticated copy of a statement that has been filed with the Commission and recorded in
184 the office for recording transfers of real property has the effect provided for recorded statements in this
185 chapter. A recorded statement that is not a duly authenticated copy of a statement filed with the
186 Commission does not have the effect provided for recorded statements in this chapter.

187 C. A statement filed by a partnership shall be executed by at least two partners. Other statements
188 shall be executed by a partner or other person authorized by this chapter. *The person executing a*
189 *statement shall sign it and state beneath or opposite his signature his name and the capacity in which*
190 *he executes the document.* An individual who executes a statement as, or on behalf of, a partner or other
191 person named as a partner in a statement shall personally declare under penalty of perjury that the
192 contents of the statement are accurate. Any person may execute a statement by an attorney-in-fact.

193 D. A person authorized by this chapter to file a statement may amend or cancel the statement by
194 filing an amendment or cancellation that names the partnership, identifies the statement, and states the
195 substance of the amendment or cancellation.

196 E. A person who files a statement pursuant to this section shall promptly send a copy of the
197 statement to every nonfiling partner and to any other person named as a partner in the statement. Failure
198 to send a copy of a statement to a partner or other person does not limit the effectiveness of the
199 statement as to a person not a partner.

200 F. The Commission shall charge and collect the following fees:

201 1. The fee shall be \$100 for any one of the following:

- 202 a. For filing a statement of registration as a registered limited liability partnership;
203 b. For filing a statement of registration as a foreign registered limited liability partnership; or
204 c. For restoration of status pursuant to subdivision ~~F~~ E. 1. of § 50-73.134.

205 2. The fee shall be fifty dollars for filing any one of the following:

- 206 a. An amendment to a statement of registration as a registered limited liability partnership;
207 b. An amendment to a statement of registration as a foreign registered limited liability partnership; or
208 c. An annual *continuation* report pursuant to § 50-73.134.

209 3. For filing any other statement or amendment thereto or cancellation thereof, the fee shall be
210 twenty-five dollars. The fees paid into the state treasury under this section shall be set aside and paid
211 into the special fund created under § 13.1-775.1, subject to that section. The court responsible for
212 recording transfers of real property may collect a fee for recording a statement.

213 G. The Commission may provide forms for statements and reports.

214 H. Any statement filed with the Commission under this chapter shall be typewritten or printed. The
215 typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten
216 or printed statements may be filed. In every case, information in the statement shall be legible and the
217 document shall be capable of being reformatted and reproduced in copies of archival quality. The
218 statement shall be in the English language. A partnership name need not be in English if written in
219 English letters or Arabic or Roman numerals. Any signature on a statement may be a facsimile.

220 I. The Commission may accept the electronic filing of any information required or permitted to be
221 filed under this chapter and may prescribe the methods of execution, recording, reproduction and
222 certification of electronically filed information pursuant to § 59.1-496.

223 J. A statement shall be effective at the time of the filing of the statement with the Commission as set
224 forth in this section unless the statement states that it shall become effective at a later time and date
225 specified in the statement. In that event, the statement shall become effective at the earlier of the time
226 and date so specified or 11:59 p.m. on the fifteenth day after the date on which the statement is filed
227 with the Commission.

228 § 50-73.93. Statement of partnership authority.

229 A. A partnership may file a statement of partnership authority, which:

230 1. Shall include:

- 231 a. The name of the partnership;
232 b. *The name of the state or other jurisdiction of its formation;*
233 ~~b~~ c. The street address of its chief executive office and of one office in this Commonwealth, if there
234 is one;

235 ~~e~~ d. The names and mailing addresses of all of the partners or of an agent appointed and maintained
236 by the partnership for the purpose of subsection B; and

237 ~~d~~ e. The names of the partners authorized to execute an instrument transferring real property held in
238 the name of the partnership; and

239 2. May state the authority, or limitations on the authority, of some or all of the partners to enter into
240 other transactions on behalf of the partnership and any other matter.

241 B. If a statement of partnership authority names an agent, the agent shall maintain a list of the names
242 and mailing addresses of all of the partners and make it available to any person on request for good
243 cause shown.

C. If a filed statement of partnership authority is executed pursuant to subsection C of § 50-73.83 and states the name of the partnership but does not contain all of the other information required by subsection A, the statement nevertheless operates with respect to a person not a partner as provided in subsections D and E.

D. Except as otherwise provided in subsection G, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

1. Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

2. A grant of authority to transfer real property held in the name of the partnership contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then of record with the Commission. The filing of a cancellation of a limitation on authority revives the previous grant of authority.

E. A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a filed statement containing the limitation on authority is of record with the Commission.

F. Except as otherwise provided in subsections D and E and §§ 50-73.115 and 50-73.121, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

G. Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the Commission.

§ 50-73.132. Registered limited liability partnerships.

A. To become a registered limited liability partnership, a partnership shall file with the Commission a statement of registration as a registered limited liability partnership stating: the name of the partnership; the address of its principal office (which may, but need not be, located within the Commonwealth); the post office address, including the street and number, if any, of its initial registered office; the name of the city or county in which the registered office is located; the name of its initial registered agent at that office and that the agent is either (i) an individual who is a resident of Virginia and is either a general partner of the registered limited liability partnership, an officer or director of a corporate general partner of the registered limited liability partnership, a general partner of a general partner of the registered limited liability partnership, a member or manager of a limited liability company that is a general partner of the registered limited liability partnership, a trustee of a trust that is a general partner of the registered limited liability partnership, or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in this Commonwealth; any other matters that the partnership determines to include; and that the partnership thereby applies for status as a registered limited liability partnership. A partnership becomes a registered limited liability partnership at the time of the filing of the initial statement of registration with the Commission or at any later date or time specified in the statement of registration as provided in subsection J of § 50-73.83.

B. The Commission shall register as a registered limited liability partnership any partnership that submits a completed statement of registration with the required fee.

C. The registration of a partnership as a registered limited liability partnership shall be approved by the partners in the manner provided in the partnership's partnership agreement for amendments to the partnership agreement or, if no provision is made in the partnership agreement, by all of the partners.

D. A partnership that has registered shall continue to be a registered limited liability partnership until:

1. Registration statement is revoked pursuant to subsection D C of § 50-73.134; or

2. The partnership or limited partnership files with the Commission a statement of cancellation of registration under § 50-73.137.

E. A partnership that has been registered as a registered limited liability partnership under this chapter is, for all purposes, the same entity that existed before it registered.

§ 50-73.134. Registered limited liability partnership annual continuation reports.

A. On or before July 1 of each year after the calendar year in which it became registered under § 50-73.132, each registered limited liability partnership and each foreign registered limited liability partnership authorized to transact business in this Commonwealth shall file an annual continuation report with the Commission setting forth the name of the partnership, the partnership's current principal office address and, if a foreign registered limited liability partnership, the jurisdiction in which it is registered as a registered limited liability partnership. If the report appears to be incomplete or inaccurate, the

Commission shall return it for correction or explanation. Otherwise, it shall be deemed filed in the office of the clerk of the Commission. The report shall be made on forms furnished by the Commission and shall be forwarded by the clerk of the Commission, before June 1, to each registered limited liability partnership.

B. The information required shall be given as of the date of the execution of the report, and it shall be executed by a partner in the registered limited liability partnership or foreign registered limited liability partnership or, if a receiver or trustee has been appointed for the partnership, by the receiver or trustee on behalf of the registered limited liability partnership or foreign registered limited liability partnership. The report shall be accompanied by the fee prescribed in subdivision F 2 of § 50-73.83.

~~C. [Repealed.]~~

~~D. C.~~ If any registered limited liability partnership or foreign registered limited liability partnership has failed to pay the fee or to file any report required by this section on or before September 1 of the year due, the Commission shall mail notice by first-class mail to the partnership of impending revocation of its registration. Whether or not such notice is mailed, if the partnership fails to file the report or pay the fee before November 1 of the year it is due, the registration of the partnership shall be automatically revoked and the partnership shall automatically cease to be a registered limited liability partnership or foreign registered limited liability partnership as of November 1, but shall continue to be a partnership or limited partnership, as the case may be, under this title.

~~E. D.~~ Any registered limited liability partnership that has ceased to be a registered limited liability partnership under subsection ~~D. C.~~ shall not be considered to have dissolved as a result of ceasing to be a registered limited liability partnership.

~~F. E.~~ A registered limited liability partnership or foreign registered limited liability partnership that has ceased to be a registered limited liability partnership or a foreign registered limited liability partnership, as the case may be, under subsection ~~D. C.~~ may restore its status as such by taking some or all of the following steps, as applicable:

1. Paying a restoration fee prescribed in subdivision F 1 of § 50-73.83;

2. Making and delivering a report and paying the fee due upon filing the report for the year in which it is to be reinstated; and

3. Paying an amount equal to all fees that were due before cessation of registered status and that would have become due thereafter for filing annual continuation reports for registered limited liability partnerships if cessation of status had not occurred.

~~G. F.~~ A registered limited liability partnership or foreign registered limited liability partnership that has ceased to be a registered limited liability partnership or foreign registered limited liability partnership under this section that restores its status as a registered limited liability partnership or foreign registered limited liability partnership within two years after the date on which its status as such has ceased shall be deemed not to have lost its status as a registered limited liability partnership or foreign registered limited liability partnership under this section.

G. The Commission shall not file with respect to any domestic or foreign registered limited liability partnership any statement referred to in this chapter until all annual continuation reports required to be filed with the Commission under this article have been filed.

§ 50-73.138. Registration of foreign registered limited liability partnerships.

A. Before transacting business in this Commonwealth, a foreign registered limited liability partnership shall register with the Commission. An applicant for registration as a foreign registered limited liability partnership shall file with the Commission a certificate of status from the filing office in the jurisdiction in which the foreign registered limited liability partnership is registered and a statement of registration as a foreign limited liability partnership setting forth the information described in subsection B.

B. A statement of registration as a foreign registered limited liability partnership shall set forth the following:

1. The name of the foreign registered limited liability partnership and, if different, the name under which it proposes to transact business in this Commonwealth. The name under which a foreign registered limited liability partnership proposes to transact business in this Commonwealth shall comply with § 50-73.133;

2. The jurisdiction in which it is registered as a limited liability partnership and the laws of which govern the agreement pursuant to which it was formed;

3. The address of its principal office;

4. The address of a registered office and the name and address of a registered agent for service of process in this Commonwealth required to be maintained in accordance with § 50-73.135; and

5. That the partnership thereby applies for status as a foreign registered limited liability partnership.

C. The Commission shall register as a foreign registered limited liability partnership any partnership that submits a completed statement of registration with the required fee.

D. Registration as a foreign registered limited liability partnership is effective until:

- 367 1. The registration statement is revoked pursuant to subsection ~~D~~ C of § 50-73.134; or
368 2. The partnership files with the Commission a statement of cancellation of registration under
369 § 50-73.139.
370 2. That § 50-73.11:1 of the Code of Virginia is repealed.

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