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## SENATE BILL NO. 547

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Commerce and Labor  
on February 28, 2006)

(Patron Prior to Substitute—Senator Stosch)

A BILL to amend and reenact §§ 6.1-61, 8.01-513, 13.1-1002, 13.1-1005, 13.1-1009, 13.1-1010.1, 13.1-1010.3, 13.1-1014, 13.1-1014.1, 13.1-1019, 13.1-1038, 13.1-1038.1, 13.1-1039, 13.1-1040.2, 13.1-1041.1, 13.1-1057, 13.1-1067, 15.2-5800 as it is currently effective, 50-73.46:1, 50-73.79, 50-73.108, 50-73.117, 56-1, and 58.1-2201 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 13.1-1049.2 and 13.1-1049.3, in Chapter 12 of Title 13.1 an article numbered 14, consisting of sections numbered 13.1-1074 through 13.1-1080, and sections 50-73.52:2, 50-73.52:3, 50-73.137:3, and 50-73.137:4, relating to limited liability companies and limited partnerships.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-61, 8.01-513, 13.1-1002, 13.1-1005, 13.1-1009, 13.1-1010.1, 13.1-1010.3, 13.1-1014, 13.1-1014.1, 13.1-1019, 13.1-1038, 13.1-1038.1, 13.1-1039, 13.1-1040.2, 13.1-1041.1, 13.1-1057, 13.1-1067, 15.2-5800 as it is currently effective, 50-73.46:1, 50-73.79, 50-73.108, 50-73.117, 56-1, and 58.1-2201 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 13.1-1049.2 and 13.1-1049.3, in Chapter 12 of Title 13.1 an article numbered 14, consisting of sections numbered 13.1-1074 through 13.1-1080, and sections 50-73.52:2, 50-73.52:3, 50-73.137:3, and 50-73.137:4 as follows:

§ 6.1-61. Limitations on obligations of borrowers.

Subject to the exceptions hereinafter stated, the total obligations of any person, partnership (including, as hereinafter provided, the partners having a five percent or greater interest in either the income or capital thereof other than limited partners), association, *limited liability company* or corporation to any bank shall at no time exceed fifteen percent of the sum of the capital, surplus, and loan loss reserve of such bank. For the purposes of this section the obligation of partners in the partnership and the partnership shall not be combined with each other except to the extent hereafter permitted. (1) If the purpose for which the obligation of any partner was incurred or utilized relates to the partnership or the purposes of the partnership, including acquisition of an interest in the partnership, such obligation shall be combined with the obligation of the partnership. (2) If the primary source of repayment of a partner's individual obligation is the partnership or funds therefrom, the obligation of the partnership shall be combined with the obligation of such partner, other than a limited partner or partner with less than five percent interest, and the limitation specified herein shall apply to the combined obligations of each such partner and the partnership. Except in the two instances specified in (1) and (2) of this paragraph, the individual liability of the partner shall not be treated as an obligation of the individual hereunder, nor shall the obligations of partner as individual guarantor on partnership obligations be treated as an obligation of the individual for purposes of computation hereunder when, in either case, the bank has a certificate of a responsible officer designated by the board of directors for this purpose stating that the responsibility of the partnership for each obligation has been evaluated and the bank is relying primarily upon such partnership for the payment of such indebtedness. For the purposes of this section there may be counted as part of the surplus (a) the undivided profits as of the date of the most recent call statement, and (b) capital notes and debentures, the issuance of which has been approved by the Commission, outstanding as of said date, and consisting of debt obligations subordinate to all other contractual liabilities of the bank.

The term "obligations" shall mean the direct liability of the maker or acceptor of the paper discounted with or sold to such bank and the liability of the endorser, drawer or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such bank, and shall include in the case of obligations of a corporation or a *limited liability company* all obligations of all subsidiaries thereof in which such corporation or *limited liability company* owns or controls a majority interest. The term "obligation" shall include any liability of the bank under a letter of credit, other than a letter of credit arising out of transactions involving the importation or exportation of goods or the domestic shipment of goods, except to the extent (i) the bank has a binding participation of another bank, organized under the laws of this Commonwealth or another state or the United States, or a written commitment by another such bank to assume primary liability therefor, or (ii) such bank issuing the letter of credit has in its possession money on deposit to the credit of such customer or securities or assets readily convertible into cash with which to honor such letter of credit.

A. The following kinds of obligations shall not be subject to any limitation, except as expressly stated in subdivision A (7) of this section:

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60 (1) Obligations in the form of drafts or bills of exchange drawn in good faith against actually  
61 existing values;

62 (2) Obligations arising out of the discount of commercial or business paper actually owned by the  
63 person, partnership, association, *limited liability company* or corporation negotiating the same;

64 (3) Obligations drawn in good faith against actually existing values and secured by goods or  
65 commodities in process of shipment;

66 (4) Obligations in the form of banker's acceptances of other banks of the kind described in section  
67 thirteen of the Federal Reserve Act;

68 (5) Obligations of the United States, obligations of the Commonwealth of Virginia and of its political  
69 subdivisions, including sanitary or public facilities districts, obligations fully guaranteed or insured by a  
70 state or by a state authority for the payment of the obligation of which the faith and credit of the state is  
71 pledged, obligations issued by the Federal Home Loan Banks, first mortgage real estate loans which are  
72 insured by the Federal Housing Administrator, obligations guaranteed as to principal and interest by the  
73 United States, loans in which the Small Business Administration or a federal reserve bank has definitely  
74 agreed or committed itself to participate, to the extent of such participation, obligations guaranteed by  
75 the Small Business Administration or Farmers Home Administration, to the extent of such guaranty,  
76 loans which the Federal Commodity Credit Corporation has definitely agreed to purchase, direct  
77 obligations of and obligations guaranteed by the Export-Import Bank and loans guaranteed by a federal  
78 guaranteeing agency, pursuant to the Defense Production Act of 1950, or bonds and notes of the Federal  
79 National Mortgage Association or bonds, debentures and other similar obligations of Federal Land  
80 Banks, Federal Intermediate Credit Banks, or Banks for Cooperatives issues pursuant to acts of  
81 Congress, obligations of the Federal Financing Bank, the Student Loan Marketing Association, the  
82 Federal Home Loan Mortgage Corporation, the National Credit Union Administration, Farm Credit  
83 Banks, the Government National Mortgage Association and the Commodity Credit Corporation, as well  
84 as time deposits in a Federal Home Loan Bank and repurchase agreements of obligations authorized by  
85 this subsection;

86 (6) Obligations of any person, partnership, association, *limited liability company*, or corporation  
87 secured by not less than a like amount of bonds or notes or other evidences of indebtedness of the  
88 United States or of the Commonwealth of Virginia;

89 (7) Obligations as endorser or guarantor of installment consumer paper which carries a full or limited  
90 endorsement or guarantee of the person, partnership, association, *limited liability company*, or  
91 corporation transferring the same when the bank has a certificate of a responsible officer designated by  
92 its board of directors for that purpose stating that the responsibility of the maker of such obligation has  
93 been evaluated and the bank is relying primarily upon such maker for the payment of such obligation, in  
94 which case the limitations of this section as to the obligations of the maker shall be the sole applicable  
95 loan limitation. As used in this subdivision, the term "installment consumer paper" shall be deemed to  
96 include installment notes of up to ten years' duration for the purchase of unimproved real property;

97 (8) Obligations secured by the pledge or assignment of certificates of deposit or saving certificates of  
98 the lending bank, to the extent of the principal amount of such certificates so pledged or assigned.

99 B. The following kinds of obligations shall be subject to a limitation of thirty percent of such capital  
100 and surplus:

101 (1) Obligations as endorser or guarantor of notes, other than commercial or business paper excepted  
102 under subdivision A (2) of this section having a maturity of not more than six months, and owned by  
103 the person, partnership, *limited liability company*, or corporation endorsing and negotiating the same.

104 (2) Obligations of any person, partnership, *limited liability company*, or corporation in the form of  
105 notes or drafts secured by shipping documents or instruments transferring or securing title covering  
106 livestock or giving a lien on livestock when the market value of the livestock securing the obligations is  
107 not at any time less than 115 percent of the amount by which the obligations exceed fifteen percent of  
108 such capital and surplus.

109 (3) Obligations secured by bonds or notes of the United States, or bonds of the Commonwealth of  
110 Virginia or any of its political subdivisions, if the face value thereof is at least equal to the excess of the  
111 obligations over fifteen percent of such capital and surplus.

112 C. Nonrenewable obligations having not more than ten months to run consisting of notes or drafts  
113 secured by shipping documents, warehouse receipts or similar documents creating a security interest in  
114 readily marketable, nonperishable, staple commodities, insured to the extent that insurance is customarily  
115 required, shall be subject to a sliding scale limitation up to fifty percent of such capital, surplus and  
116 undivided profits. The sliding scale limitation shall be as follows: when the face amount of the  
117 obligation exceeds fifteen percent of such capital and surplus by any number of percentage points up to  
118 thirty-five, the market value of the security for the obligation must exceed the face amount of the  
119 obligation by at least the same number of percentage points.

120 D. The Commission shall promulgate necessary rules and regulations to require entities, which would  
121 otherwise be treated as separate entities, to be treated as related for the purposes of compelling reporting

not more frequently than quarterly, to the Commission of the aggregate obligations of such parties to the bank. For the purposes of this subdivision, the Commission may treat as related parties, persons in the same household or which are the parents, grandparents, children or grandchild or grandchildren of each other whether or not in the same household. Any person owning as much as thirty-four percent of stock of a corporation or being an officer or director of such corporation may be treated as related to such corporation ~~and any party~~. *Any person entitled to a share of the profits and losses of or distributions from a limited liability company, or who is a manager of a manager-managed limited liability company or a member of a member-managed limited liability company, may be treated as related to the limited liability company. Any person having an interest in income or capital of a partnership may be treated as a related party.*

All loans made by a bank in excess of fifteen percent of its capital and surplus shall be approved by the board of directors or the executive committee of the bank by resolution recorded in the minute book.

E. Notwithstanding the limitations in this section, the Commission may by rule or regulation authorize state banks to make loans to one borrower in such amounts as may be authorized under any lending limit laws applicable to national banks.

§ 8.01-513. Service upon corporation or limited liability company.

A. If the person upon whom there is a suggestion of liability as provided in § 8.01-511 is a corporation, the summons shall be served upon an officer, an employee designated by the corporation other than an officer of the corporation, or, if there is no designated employee or the designated employee cannot be found, upon a managing employee of the corporation other than an officer of the corporation. If the judgment creditor or his attorney files with the court a certificate that he has used due diligence and that (i) no such officer or employee or other person authorized to accept such service can be found within the Commonwealth or (ii) such designated or managing employee found is also the judgment debtor, then such summons shall be served on the registered agent of the corporation or upon the clerk of the State Corporation Commission as provided in §§ 13.1-637, 13.1-766, 13.1-836 and 13.1-928. However, service on the corporation shall not be made upon a designated or managing employee who is also the judgment debtor. If the corporation intends to designate an employee for service, the corporation shall file a designation with the State Corporation Commission. ~~For the purposes of this section, "managing employee" means an employee charged by the corporation with the control of operations and supervision of employees at the business location of the corporation where process is sought to be served.~~

B. *If the person upon whom there is a suggestion of liability as provided in § 8.01-511 is a limited liability company, the summons shall be served upon a member, manager, or employee designated by the limited liability company for the purpose of such service or, if there is no designated member, manager, or employee, or the designated member, manager, or employee cannot be found, upon a managing employee of the limited liability company. If the judgment creditor or his attorney files with the court a certificate that he has used due diligence and that (i) no such member, manager, or employee or other person authorized to accept such service can be found within the Commonwealth or (ii) such designated member, manager, employee, or managing employee found is also the judgment debtor, then such summons shall be served on the registered agent of the limited liability company or upon the clerk of the State Corporation Commission as provided in §§ 13.1-1018. However, service on the limited liability company shall not be made upon a designated member, manager, employee, or managing employee who is also the judgment debtor. If the limited liability company intends to designate a member, manager, or employee for service, the limited liability company shall file a designation with the State Corporation Commission.*

C. *For the purposes of this section, "managing employee" means an employee charged by the corporation or the limited liability company, as applicable, with the control of operations and supervision of employees at the business location of such corporation or limited liability company where process is sought to be served.*

§ 13.1-1002. Definitions.

As used in this chapter:

"Articles of organization" means all documents constituting, at any particular time, the articles of organization of a limited liability company. It includes the original articles of organization, the original certificate of organization issued by the Commission, and all amendments to the articles of organization. When the articles of organization have been restated pursuant to any articles of amendment, it includes only the restated articles of organization and any subsequent amendments to the restated articles of organization, but does not include the articles of amendment accompanying the restated articles of organization.

"Bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code.

"Commission" means the State Corporation Commission of Virginia.

183 "Contribution" means any cash, property or services rendered, or a promissory note or other binding  
184 obligation to contribute cash or property or to perform services, which a member contributes to a limited  
185 liability company in his capacity as a member.

186 "Distribution" means a direct or indirect transfer of money or other property, or incurrence of  
187 indebtedness by a limited liability company, to or for the benefit of its members in respect of their  
188 interests.

189 "Domestic business trust" has the same meaning as specified in § 13.1-1201.

190 "Domestic corporation" has the same meaning as specified in § 13.1-603.

191 "Domestic limited partnership" has the same meaning as specified in § 50-73.1.

192 "Domestic partnership" means an association of two or more persons to carry on as co-owners a  
193 business for profit formed under § 50-73.88, or predecessor law of the Commonwealth, and includes, for  
194 all purposes of the laws of the Commonwealth, a registered limited liability partnership.

195 "Electronic transmission" means any form of communication, not directly involving the physical  
196 transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient  
197 thereof, and that may be directly reproduced in paper form by such a recipient through an automated  
198 process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic  
199 Transactions Act shall have the meaning set forth in such section.

200 "Foreign business trust" has the same meaning as specified in § 13.1-1201.

201 "Foreign corporation" has the same meaning as specified in § 13.1-603.

202 "Foreign limited liability company" means an entity, excluding a foreign business trust, that is an  
203 unincorporated association organized under laws other than the laws of this Commonwealth, and that  
204 affords to each of its members, pursuant to the laws under which it is organized, limited liability with  
205 respect to the liabilities of the entity.

206 "Foreign limited partnership" has the same meaning as specified in § 50-73.1.

207 "Foreign partnership" means an association of two or more persons to carry on as co-owners a  
208 business for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and  
209 includes, for all purposes of the laws of the Commonwealth, a foreign registered limited liability  
210 partnership.

211 "Foreign registered limited liability partnership" has the same meanings as specified in §§ 50-2 and  
212 50-73.79.

213 "Limited liability company" or "domestic limited liability company" means an entity that is an  
214 unincorporated association that is organized and existing under this chapter, *or that has become a*  
215 *domestic limited liability company of the Commonwealth pursuant to § 13.1-1010.3, even though also*  
216 *being a non-United States entity organized under laws other than the laws of the Commonwealth, or*  
217 *that has become a domestic limited liability company of the Commonwealth pursuant to § 56-1, even*  
218 *though also being a limited liability company organized under laws other than the laws of the*  
219 *Commonwealth, or that has become a domestic limited liability company of the Commonwealth pursuant*  
220 *to § 13.1-1010.1, Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9 of this title, or, effective on and after*  
221 *November 1, 2006, Article 14 (§ 13.1-1074 et seq.) of Chapter 12 of this title. A limited liability*  
222 *company's status for federal tax purposes shall not affect its status as a distinct entity organized and*  
223 *existing under this chapter.*

224 "Manager" or "managers" means a person or persons designated by the members of a limited liability  
225 company to manage the limited liability company as provided in the articles of organization or an  
226 operating agreement.

227 "Manager-managed limited liability company" means a limited liability company that is managed by  
228 a manager or managers as provided for in its articles of organization or an operating agreement.

229 "Member" means a person that has been admitted to membership in a limited liability company as  
230 provided in § 13.1-1038.1 and that has not ceased to be a member.

231 "Member-managed limited liability company" means a limited liability company that is not a  
232 manager-managed limited liability company.

233 "Membership interest" or "interest" means, except as otherwise provided in the articles of  
234 organization or an operating agreement, a member's share of the profits and the losses of the limited  
235 liability company and the right to receive distributions of the limited liability company's assets.

236 "Non-United States entity" means a foreign limited liability company (other than one formed under  
237 the laws of a state), or a corporation, business trust or association, real estate investment trust,  
238 common-law trust, or any other unincorporated business, including a partnership, formed, incorporated,  
239 organized, created or that otherwise came into being under the laws of any foreign country or other  
240 foreign jurisdiction (other than any state).

241 "Operating agreement" means an agreement of the members as to the affairs of a limited liability  
242 company and the conduct of its business, or a writing or agreement of a limited liability company with  
243 one member that satisfies the requirements of subdivision A 2 of § 13.1-1023.

244 "Person" has the same meaning as specified in § 13.1-603.

"Principal office" means the office, in or out of the Commonwealth, where the principal executive offices of a domestic or foreign limited liability company are located.

"State," when referring to a part of the United States, includes a state, commonwealth and the District of Columbia, and their agencies and governmental subdivisions; and a territory or insular possession, and their agencies and governmental subdivisions, of the United States.

"United States" includes a district, authority, bureau, commission, department and any other agency of the United States.

§ 13.1-1009. Powers.

Unless the articles of organization provide otherwise, every limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

1. To sue and be sued, complain and defend in its name;
2. To purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
3. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
4. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other person;
5. To make contracts and guaranties, incur liabilities, borrow money, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;
6. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
7. To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this Commonwealth;
8. To elect and appoint managers, employees and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit;
9. To pay pensions and establish pension plans, pension trusts, profit sharing plans, and benefit and incentive plans for all or any of the current or former managers, members, employees, and agents of the limited liability company or any of its subsidiaries;
10. To make donations to the public welfare or for religious, charitable, scientific, literary or educational purposes;
11. To make payments or donations, or do any other act, not inconsistent with this section or any other applicable law, that furthers the business and affairs of the limited liability company;
12. To pay compensation, or to pay additional compensation to any or all managers, members, and employees on account of services previously rendered to the limited liability company, whether or not an agreement to pay such compensation was made before such services were rendered;
13. To insure for its benefit the life of any of its managers, members, or employees, to insure the life of any member for the purpose of acquiring at his death the interest owned by such member and to continue such insurance after the relationship terminates;
14. To cease its activities and cancel its certificate of organization;
15. To enter into partnership agreements, joint ventures, or other associations of any kind with any person or persons;
16. Subject to such standards and restrictions, if any, as are set forth in its articles of organization or an operating agreement, to indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever, *and to pay for or reimburse any member or manager or other person for reasonable expenses incurred by such a person who is a party to a proceeding in advance of final disposition of the proceeding*;
17. To transact any lawful business that a corporation, partnership, or other business entity may conduct under the laws of the Commonwealth subject, however, to any and all laws and restrictions that govern or limit the conduct of such activity by such corporation, partnership or other business entity; and
18. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized.

§ 13.1-1005. Fees.

The Commission shall charge and collect the following fees:

1. For filing any one of the following, the fee shall be \$100:
  - a. Articles of organization.
  - b. An application for registration as a foreign limited liability company.
  - c. Articles of reinstatement.

306 d. Articles of entity conversion.  
307 e. *Articles of domestication.*  
308 2. For filing any one of the following, the fee shall be \$25:  
309 a. Articles of amendment.  
310 b. A certificate of cancellation with respect to a domestic or foreign limited liability company.  
311 c. Articles of correction referred to in § 13.1-1011.1 or a certificate of correction referred to in  
312 § 13.1-1055.  
313 d. A copy of an instrument of merger of a foreign limited liability company referred to in  
314 § 13.1-1060.  
315 e. Articles of merger.  
316 f. A copy of an instrument of entity conversion of a foreign limited liability company holding a  
317 certificate of registration to transact business in the Commonwealth.  
318 g. Articles of restatement.  
319 h. *Articles of organization surrender.*  
320 3. For filing any one of the following, the fee shall be \$10:  
321 a. An application to reserve or to renew the reservation of a name for use by a domestic or foreign  
322 limited liability company.  
323 b. A notice of the transfer of a name reserved for use by a domestic or a foreign limited liability  
324 company.  
325 4. For issuing a certificate pursuant to § 13.1-1067, \$6 for each certificate.  
326 § 13.1-1010.1. Conversion of partnership to limited liability company.  
327 A. A domestic or foreign partnership or limited partnership may convert to a limited liability  
328 company by filing articles of organization that meet the requirements of § 13.1-1011 and include the  
329 following:  
330 1. The name of the former partnership or limited partnership;  
331 2. The date and place of filing of the initial certificate or statement of partnership, if any, certificate  
332 of limited partnership or similar document of the former partnership or limited partnership; and  
333 3. If the former partnership or limited partnership is a registered limited liability partnership, the date  
334 and place of filing of the initial registration as or statement of registered limited liability partnership.  
335 B. The terms and conditions of a conversion of a partnership or limited partnership to a limited  
336 liability company shall be approved by the partners in the manner provided in the partnership's  
337 partnership agreement for amendments to the partnership agreement or, if no such provision is made in  
338 a partnership agreement, by all the partners.  
339 C. A general partner who becomes a member of a limited liability company as a result of the  
340 conversion remains liable as a general partner for an obligation incurred by the partnership before the  
341 conversion takes effect to the same extent that the general partner is liable for that obligation before the  
342 conversion takes effect. The general partner's liability for all obligations of the limited liability company  
343 incurred after the conversion takes effect is that of a member or manager of a limited liability company,  
344 as the case may be, as provided in this chapter.  
345 D. *If a foreign partnership or limited partnership that converts into a domestic liability company is*  
346 *authorized to transact business in this Commonwealth under Article 9 (§ 50-73.53 et seq.) of Chapter*  
347 *2.1 of Title 50 or registered as a foreign registered limited liability partnership under Article 9.1*  
348 *(§ 50-73.112 et seq.) of Chapter 2.2 of Title 50, its certificate of authority or registration, as the case*  
349 *may be, shall be cancelled automatically on the effective date of the certificate of organization issued by*  
350 *the Commission.*  
351 § 13.1-1010.3. Domestication of non-United States entities.  
352 A. Any non-United States entity may become domesticated as a limited liability company by  
353 complying with subsection E of this section and filing articles of organization that meet the requirements  
354 of §§ 13.1-1003 and 13.1-1011 and include the following:  
355 1. The name of the non-United States entity immediately prior to the filing of the articles of  
356 organization;  
357 2. The date on which and the jurisdiction in which the non-United States entity was first formed,  
358 incorporated, organized, created or otherwise came into being; *and*  
359 3. The jurisdiction that constituted the seat, siege social, or principal place of business or central  
360 administration of the non-United States entity, or any equivalent thereto under applicable law,  
361 immediately prior to the filing of the articles of organization.  
362 B. A non-United States entity that has been domesticated pursuant to this section shall be deemed for  
363 all purposes the same entity that existed before the domestication.  
364 C. Upon the effective date and time of the certificate of organization:  
365 1. The non-United States entity shall be domesticated as a limited liability company, and the limited  
366 liability company shall thereafter be subject to all of the provisions of this chapter, except that  
367 notwithstanding subsection B of § 13.1-1004, the existence of the limited liability company shall be

deemed to have commenced on the date the non-United States entity commenced its existence in the jurisdiction in which the non-United States entity was first formed, incorporated, organized, created or otherwise came into being;

2. All property owned by the non-United States entity remains vested in the domesticated entity;

3. All obligations of the non-United States entity continue as obligations of the domesticated entity; and

4. An action or proceeding pending against the non-United States entity may be continued as if the domestication had not occurred.

D. The filing of articles of organization shall not affect the choice of law applicable to the non-United States entity, except that from the effective date of the time of the domestication, the law of the Commonwealth of Virginia, including the provisions of this chapter, shall apply to the non-United States entity to the same extent as if the non-United States entity had been organized as a limited liability company on the effective date of the certificate of organization.

E. The terms and conditions of a domestication of a non-United States entity as a limited liability company shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity in the conduct of its business or by applicable law other than the law of the Commonwealth, as appropriate.

F. Unless otherwise agreed, or as required under applicable non-Virginia law, the domesticating non-United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets. The domestication shall not be deemed to constitute a dissolution of the non-United States entity and shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a domestic limited liability company. If, following domestication, a non-United States entity that has become domesticated as a limited liability company continues its existence in the foreign country or other foreign jurisdiction in which it was existing immediately prior to domestication, the limited liability company and the non-United States entity shall, for all purposes of the laws of the Commonwealth of Virginia, constitute a single entity formed, organized, incorporated, created or otherwise having come into being, as applicable, and exist under the laws of the Commonwealth of Virginia and the laws of such foreign country or other foreign jurisdiction.

§ 13.1-1014. Amendment of articles of organization.

A. A limited liability company may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles, or to delete a provision not required in the articles.

B. For an amendment to the articles of organization of a limited liability company to be adopted, the amendment shall be approved *by that number or percentage of members required to amend an operating agreement*, unless the articles of organization ~~require a greater vote, by a majority vote of the members entitled to vote thereon or a written operating agreement otherwise provide~~, provided that if the limited liability company has been formed without any members and no members have been admitted, an amendment may be adopted by the persons named as a manager in the articles of organization or, if there are no members or managers, by the persons who formed the limited liability company under § 13.1-1010.

C. To amend its articles of organization, a limited liability company shall file with the Commission articles of amendment setting forth:

1. The name of the limited liability company;

2. The text of each amendment adopted;

3. The date of each amendment's adoption; and

4. A statement that the amendment was adopted by a vote of the members, by the managers or by the persons who formed the limited liability company in accordance with this chapter.

If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment.

D. An amendment to articles of organization does not affect a cause of action existing against or in favor of the limited liability company, a proceeding to which the limited liability company is a party, or the existing rights of persons other than members of the limited liability company. An amendment changing a limited liability company's name does not abate a proceeding brought by or against the limited liability company in its former name.

E. A member of a limited liability company does not have a vested property right resulting from any provision of the articles of organization.

§ 13.1-1014.1. Restatement of articles of organization.

A. A limited liability company may restate its articles of organization at any time.

B. The restatement may include one or more amendments to the articles of organization.

C. For a restatement of the articles of organization of a limited liability company to be adopted, the restatement shall be approved *by that number or percentage of members required to amend an operating agreement*, unless the articles of organization ~~require a greater vote, by a majority vote of the members~~

429 entitled to vote thereon or a written operating agreement otherwise provide, provided that if the limited  
430 liability company has been formed without any members and no members have been admitted, a  
431 restatement may be adopted by the persons named as a manager in the articles of organization or, if  
432 there are no members or managers, by the persons who formed the limited liability company under  
433 § 13.1-1010.

434 D. A limited liability company restating its articles of organization shall file with the Commission  
435 articles of restatement setting forth the name of the limited liability company and the text of the restated  
436 articles of organization together with a certificate setting forth:

- 437 1. The name of the limited liability company immediately prior to restatement;
- 438 2. The date of adoption of the restated articles of organization;
- 439 3. Whether the restatement contains an amendment or amendments to the articles of organization;
- 440 and

- 441 4. A statement that the restatement was adopted by a vote of the members, by the managers or by  
442 the persons who formed the limited liability company in accordance with this chapter.

443 E. If the Commission finds that the articles of restatement comply with the requirements of law and  
444 that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of  
445 restatement is effective, the restated articles of organization supersede the original articles of  
446 organization and all amendments to the original articles of organization.

447 F. The Commission may certify restated articles of organization as the articles of organization  
448 currently in effect without including the information set forth in the certificate required by subsection D.  
449 § 13.1-1019. Liability to third parties.

450 Except as otherwise provided by this Code or as expressly provided in the articles of organization,  
451 no member, manager, *organizer* or other agent of a limited liability company shall have any personal  
452 obligation for any liabilities of a limited liability company, whether such liabilities arise in contract, tort  
453 or otherwise, solely by reason of being a member, manager, *organizer* or agent of a limited liability  
454 company. For the purposes of this section, a person to whom the rights of a member or manager are  
455 delegated as provided in § 13.1-1022 or § 13.1-1024 shall be deemed an agent of a limited liability  
456 company.

457 § 13.1-1038. Nature of interest in limited liability company.

458 A membership interest in a limited liability company is personal property. *The only transferable*  
459 *interest of a member in the limited liability company is the member's share of the profits and losses of*  
460 *the limited liability company and the member's right to receive distributions.*

461 § 13.1-1038.1. Admission of members.

462 A. Subject to subsection B, a person may become a member in a limited liability company:

- 463 1. In the case of a person acquiring a membership interest directly from the limited liability  
464 company, upon compliance with an operating agreement or, if the operating agreement does not so  
465 provide, upon the consent of a majority of the managers of a manager-managed limited liability  
466 company or a majority vote of the members of a member-managed limited liability company;

- 467 2. In the case of an assignee of a membership interest, as provided in subsection A of § 13.1-1040;

- 468 3. In the case of a limited liability company that has no members as of the commencement of its  
469 existence under § 13.1-1004, as provided in any writing signed by both the initial member or members  
470 and the person who formed the limited liability company under § 13.1-1010; and

- 471 4. In the case of a limited liability company the last remaining member of which has dissociated, (i)  
472 as provided in a writing executed by the successor in interest of that member, who may provide for the  
473 admission of the successor in interest or its nominee or designee to the limited liability company as a  
474 member, effective as of the occurrence of the event that caused the dissociation of the last remaining  
475 member, provided that the articles of organization or an operating agreement may provide that the  
476 successor in interest of the last remaining member shall be obligated to agree in writing to the admission  
477 of the successor in interest of that member or its nominee or designee to the limited liability company  
478 as a member, effective as of the occurrence of the event that caused the dissociation of the last  
479 remaining member, or (ii) in the manner provided for in the articles of organization or an operating  
480 agreement, effective as of the occurrence of the event that caused the dissociation of the last remaining  
481 member, pursuant to a provision of the articles of organization or an operating agreement that  
482 specifically provides for the admission of a member to the limited liability company after there is no  
483 longer a remaining member of the limited liability company;

- 484 5. *In the case of a person being admitted as a member of a limited liability company pursuant to a*  
485 *merger approved in accordance with §13.1-1071, as provided in the articles of merger or an operating*  
486 *agreement of the surviving limited liability company; and*

- 487 6. *In the case of a person being admitted as a member of a limited liability company pursuant to a*  
488 *conversion or domestication of a partnership, non-United States entity, foreign limited liability company,*  
489 *or corporation into a domestic limited liability company in accordance with Article 12.2 (§ 13.1-722.8 et*  
490 *seq.) of Chapter 9 of this title or § 13.1-1010.1 or § 13.1-1010.3, or ,effective on and after November 1,*



2006, Article 14 (§ 13.1-1074 et seq.) of Chapter 12 of this title, as provided in the articles of organization or an operating agreement of the converted or domesticated limited liability company at the time of conversion or domestication.

B. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or

2. The time provided in an operating agreement, *articles of merger or articles of organization, as applicable*, or, if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

C. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a membership interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in the articles of organization or an operating agreement:

1. A person may be admitted to a limited liability company as a member of the limited liability company without acquiring a membership interest in the limited liability company; and

2. A person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a membership interest in the limited liability company.

§ 13.1-1039. Assignment of interest.

A. Unless otherwise provided in the articles of organization or an operating agreement, a membership interest in a limited liability company is assignable in whole or in part. An assignment of an interest in a limited liability company does not of itself dissolve the limited liability company. An assignment does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights of a member. Such an assignment entitles the assignee to receive, to the extent assigned, only any share of profits and losses and distributions to which the assignor would be entitled.

B. *Unless otherwise provided in the articles of organization or an operating agreement, a membership interest in a limited liability company may be evidenced by a certificate of interest issued by the limited liability company. The articles of organization or an operating agreement may provide for the assignment or transfer of any interest represented by such a certificate and make other provisions with respect to such certificates.*

§ 13.1-1040.2. Effect of a member's dissociation.

A. Except as provided in the articles of organization or an operating agreement, the dissociation of a member shall not affect the membership interest held by the dissociated member or the former member's successor in interest. The former member or successor in interest shall continue to hold a membership interest and shall have the same rights that an assignee of the membership interest would have under subsection A of § 13.1-1039.

B. Except as provided in the articles of organization or an operating agreement, the dissociation of a member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and, upon the occurrence of any such event, the limited liability company shall be continued without dissolution.

§ 13.1-1041.1. Member's transferable interest subject to charging order.

A. On application by a judgment creditor of a member or of a member's assignee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the limited liability company and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require. *To the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of the interest.*

B. A charging order constitutes a lien on the judgment debtor's transferable interest in the limited liability company. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of an assignee.

C. At any time before foreclosure, an interest charged may be redeemed:

1. By the judgment debtor;

2. With property other than limited liability company property, by one or more of the other members; or

3. With the limited liability company property, by one or more of the other members with the consent of all of the members whose interests are not so charged.

D. This chapter does not deprive a member or a member's assignee of a right under exemption laws with respect to the member's judgment debtor's interest in the limited liability company.

E. ~~This section provides D.~~ *The entry of a charging order is the exclusive remedy by which a judgment creditor of a member or of a member's assignee may satisfy a judgment out of the judgment*

552 debtor's transferable interest in the limited liability company.

553 *E. No creditor of a member or of a member's assignee shall have any right to obtain possession of,*  
554 *or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability*  
555 *company.*

556 *§ 13.1-1049.2. Other claims against dissolved limited liability company.*

557 *A. A dissolved limited liability company may also publish notice of its dissolution and request that*  
558 *persons with claims against the dissolved limited liability company present them in accordance with the*  
559 *notice.*

560 *B. The notice shall:*

561 *1. Be published one time in a newspaper of general circulation in the city or county where the*  
562 *dissolved limited liability company's principal office, or, if none in the Commonwealth, its registered*  
563 *office, is or was last located;*

564 *2. Describe the information that must be included in a claim and provide a mailing address where*  
565 *the claim may be sent; and*

566 *3. State that a claim against the dissolved limited liability company will be barred unless a*  
567 *proceeding to enforce the claim is commenced prior to the earlier of the expiration of any applicable*  
568 *statute of limitations or three years after the date of publication of the notice.*

569 *C. If the dissolved limited liability company publishes a newspaper notice in accordance with*  
570 *subsection B, the claim of each of the following claimants is barred unless the claimant commences a*  
571 *proceeding to enforce the claim against the dissolved limited liability company prior to the earlier of the*  
572 *expiration of any applicable statute of limitations or three years after the publication date of the*  
573 *newspaper notice:*

574 *1. A claimant who was not given written notice under § 13.1-1049.1;*

575 *2. A claimant whose claim was timely sent to the dissolved limited liability company but not acted*  
576 *on;*

577 *3. A claimant whose claim does not meet the definition of a claim in subsection D of § 13.1-1049.1.*

578 *D. A claim that is not barred by subsection C of § 13.1-1049.1 or subsection C of § 13.1-1049.2 may*  
579 *be enforced:*

580 *1. Against the dissolved limited liability company, to the extent of its undistributed assets; or*

581 *2. Except as provided in subsection D of § 13.1-1049.3, if the assets have been distributed in*  
582 *liquidation, against a member of the dissolved limited liability company to the extent of the member's*  
583 *pro rata share of the claim or the limited liability company assets distributed to the member in*  
584 *liquidation, whichever is less, but a member's total liability for all claims under this section may not*  
585 *exceed the total amount of assets distributed to the member.*

586 *§ 13.1-1049.3 Court proceedings.*

587 *A. A dissolved limited liability company that has published a notice under § 13.1-1049.2 may file an*  
588 *application with the circuit court of the city or county where the dissolved limited liability company's*  
589 *principal office, or, if none in the Commonwealth, its registered office, is or was last located for a*  
590 *determination of the amount and form of security to be provided for payment of claims that are*  
591 *contingent or have not been made known to the dissolved limited liability company or that are based on*  
592 *an event occurring after the effective date of dissolution but that, based on the facts known to the*  
593 *dissolved limited liability company, are reasonably estimated to arise after the effective date of*  
594 *dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred*  
595 *under subsection C of § 13.1-1049.2.*

596 *B. Within 10 days after the filing of the application, notice of the proceeding shall be given by the*  
597 *dissolved limited liability company to each claimant holding a contingent claim whose contingent claim*  
598 *is shown on the records of the dissolved limited liability company.*

599 *C. The court may appoint a guardian ad litem to represent all claimants whose identities are*  
600 *unknown in any proceeding brought under this section. The reasonable fees and expenses of such*  
601 *guardian, including all reasonable expert witness fees, shall be paid by the dissolved limited liability*  
602 *company.*

603 *D. Provision by the dissolved limited liability company for security in the amount and the form*  
604 *ordered by the court under subsection A shall satisfy the dissolved limited liability company's*  
605 *obligations with respect to claims that do not meet the definition of a claim in subsection D of*  
606 *§ 13.1-1049.1, and such claims may not be enforced against a member who received assets in*  
607 *liquidation.*

608 *§ 13.1-1057. Transaction of business without registration.*

609 *A. A foreign limited liability company transacting business in this Commonwealth may not maintain*  
610 *any action, suit, or proceeding in any court of this Commonwealth until it has registered in this*  
611 *Commonwealth.*

612 *B. The failure of a foreign limited liability company to register in this Commonwealth does not*  
613 *impair the validity of any contract or act of the foreign limited liability company or prevent the foreign*

limited liability company from defending any action, suit, or proceeding in any court of this Commonwealth.

C. If a foreign limited liability company transacts business in this Commonwealth without a certificate of registration, each member, manager or employee of the limited liability company who does any of such business in this Commonwealth knowing that a certificate of ~~authority~~ *registration* is required and has not been obtained shall be liable for a penalty of not less than \$500 and not more than \$5,000 to be imposed by the Commission, after the limited liability company and the individual have been given notice and an opportunity to be heard.

D. A foreign limited liability company, by transacting business in this Commonwealth without registration, appoints the clerk of the Commission as its agent for service of process with respect to causes of action arising out of the transaction of business in this Commonwealth.

§ 13.1-1067. Property title records.

A. Whenever by (i) amendment to the articles of organization pursuant to § 13.1-1014, (ii) certificate of correction of the application for registration of a foreign limited liability company pursuant to § 13.1-1055, (iii) conversion of a general partnership or limited partnership to a limited liability company pursuant to § 13.1-1010.1, (iv) conversion of a corporation to a limited liability company where otherwise permitted by law, ~~or~~ (v) domestication of a non-United States entity as a limited liability company pursuant to § 13.1-1010.3, *or (vi) domestication of a foreign limited liability company pursuant to Article 14 (§ 13.1-1074 et seq.) of Chapter 12 of this title*, the name of any domestic or foreign limited liability company is changed or a general or limited partnership, corporation, *foreign limited liability company*, or non-United States entity is converted to *or domesticated in* limited liability company form, the clerk of the Commission, upon request, shall issue a certificate that recites the change of name ~~or~~, conversion, *or domestication*. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any court's office within the jurisdiction of which any property of the limited liability company is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

B. Whenever by merger of a domestic or foreign limited liability company with one or more domestic or foreign limited liability companies, partnerships, limited partnerships, corporations, business trusts or other entities pursuant to Article 13 (§ 13.1-1070 et seq.) of Chapter 12 of this title or to the laws of a foreign jurisdiction, or by conversion of any entity to a foreign limited liability company pursuant to the laws of a foreign jurisdiction, a domestic or foreign limited liability company succeeds to the ownership of or any interest in real estate, and when such domestic or foreign limited liability company furnishes the Commission with a certificate of merger issued by the Commission or a similar certificate of merger or conversion issued by any competent authority of the jurisdiction under which any such foreign limited liability company is organized, the clerk of the Commission, upon request, shall issue a certificate that recites the succession to ownership of or interest in real estate. The certificate may be admitted to record in the deed books, in accordance with § 17.1-227, of any recording office within the jurisdiction of which any property of the limited liability company is located in order to maintain the continuity of title records. The person filing the certificate shall pay a fee of \$10 to the clerk of the court, but no tax shall be due thereon.

#### Article 14. Domestication.

§ 13.1-1074. Domestication.

A. A foreign limited liability company may become a domestic limited liability company in the manner provided in this article. The laws of this Commonwealth shall govern the effect of domesticating in this Commonwealth pursuant to this article.

B. A domestic limited liability company not required by law to be a domestic limited liability company may become a foreign limited liability company if the jurisdiction in which the limited liability company intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved in the manner provided in this article. The laws of the jurisdiction in which the limited liability company domesticates shall govern the effect of domesticating in that jurisdiction.

§ 13.1-1075. Plan of domestication

A. The plan of domestication shall set forth:

1. A statement of the jurisdiction in which the domestic and foreign limited liability company is presently domesticated; and

2. A statement of the jurisdiction in which the domestic and foreign limited liability company is to be domesticated.

B. The plan of domestication may include:

1. As a referenced attachment, the articles of organization of the limited liability company upon its domestication; and

675 2. Any other provision relating to the domestication.

676 C. The plan of domestication may also include a provision that the members may amend the plan at  
677 any time prior to the effective date of the certificate of domestication or such other document required  
678 by the laws of the other jurisdiction to consummate the domestication.

679 § 13.1-1076. Action on plan of domestication by a domestic limited liability company.

680 In the case of a domestic limited liability company:

681 A. Unless the articles of organization or a written operating agreement of the limited liability  
682 company provides otherwise, the members of the limited liability company shall approve the plan of  
683 domestication by the members in the manner provided in the limited liability company's operating  
684 agreement for amendments to the operating agreement or, if no such provision is made in an operating  
685 agreement, by all the members.

686 B. If an amendment to a plan of domestication is made in accordance with subsection C of  
687 § 13.1-1075, and articles of domestication already have been filed with the Commission, amended  
688 articles of domestication shall be filed with the Commission before the effective date of any certificate of  
689 domestication issued by the Commission for the articles of domestication which the amended articles are  
690 to supersede.

691 § 13.1-1077. Articles of domestication.

692 A. After the domestication of a foreign limited liability company is approved in the manner required  
693 by the laws of the jurisdiction in which the limited liability company is organized, the limited liability  
694 company shall file with the Commission articles of domestication setting forth:

695 1. The name of the limited liability company immediately prior to the filing of the articles of  
696 domestication and, if that name is unavailable for use in this Commonwealth or the limited liability  
697 company desires to change its name in connection with the domestication, a name that satisfies the  
698 requirements of § 13.1-1012;

699 2. The plan of domestication; and

700 3. The original jurisdiction of the limited liability company and the date the limited liability company  
701 was organized in that jurisdiction, and each subsequent jurisdiction and the date the limited liability  
702 company was domesticated in each such jurisdiction, if any, prior to the filing of the articles of  
703 domestication.

704 B. The articles of domestication shall have attached articles of organization that comply with the  
705 requirements of this chapter.

706 C. If the Commission finds that the articles of domestication comply with the requirements of law  
707 and that all required fees have been paid, it shall issue a certificate of domestication.

708 D. The certificate of domestication shall become effective pursuant to subsection D of § 13.1-1004.

709 E. A foreign limited liability company's existence as a domestic limited liability company shall begin  
710 when the certificate of domestication is effective. Upon becoming effective, the certificate of  
711 domestication shall be conclusive evidence that all conditions precedent required to be performed by the  
712 foreign limited liability company have been complied with and that the limited liability company has  
713 been organized under this chapter.

714 F. If the foreign limited liability company is authorized to transact business in this Commonwealth  
715 under Article 10 (§ 13.1-1051 et seq.) of this chapter, its certificate of registration shall be canceled  
716 automatically on the effective date of the certificate of domestication issued by the Commission.

717 § 13.1-1078. Surrender of articles of organization upon domestication.

718 A. Whenever a domestic limited liability company has approved, in the manner required by this  
719 article, a plan of domestication providing for the limited liability company to be domesticated under the  
720 laws of another jurisdiction, the limited liability company shall file with the Commission articles of  
721 organization surrender setting forth:

722 1. The name of the limited liability company;

723 2. The limited liability company's new jurisdiction of organization;

724 3. The plan of domestication;

725 4. A statement that the articles of organization surrender are being filed in connection with the  
726 domestication of the limited liability company as a foreign limited liability company to be organized  
727 under the laws of another jurisdiction and that the limited liability company is surrendering its  
728 certificate of organization under the laws of this Commonwealth;

729 5. A statement that the limited liability company revokes the authority of its registered agent to  
730 accept service on its behalf and appoints the clerk of the Commission as its agent for service of process  
731 in any proceeding based on a cause of action arising during the time it was organized in this  
732 Commonwealth;

733 6. A mailing address to which the clerk may mail a copy of any process served on him under  
734 subdivision 5; and

735 7. A commitment to notify the clerk of the Commission in the future of any change in the mailing  
736 address of the limited liability company.

*B. If the Commission finds that the articles of organization surrender comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of organization surrender.*

*C. The limited liability company shall automatically cease to be a domestic limited liability company when the certificate of organization surrender becomes effective.*

*D. If the former domestic limited liability company intends to continue to transact business in the Commonwealth, then, within thirty days after the effective date of the certificate of organization surrender, it shall deliver to the Commission an application for a certificate of registration to transact business in the Commonwealth pursuant to § 13.1-1052 together with a copy of its instrument of domestication and articles of organization and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or other jurisdiction under whose laws it is organized or domesticated.*

*§ 13.1-1079. Effect of domestication.*

*A. When a foreign limited liability company's certificate of domestication in this Commonwealth becomes effective, with respect to that limited liability company:*

*1. The title to all real estate and other property remains in the limited liability company without reversion or impairment;*

*2. The liabilities remain the liabilities of the limited liability company;*

*3. A proceeding pending may be continued by or against the limited liability company as if the domestication did not occur;*

*4. The articles of organization attached to the articles of domestication constitute the articles of organization of the limited liability company; and*

*5. The limited liability company is deemed to:*

*a. Be organized under the laws of this Commonwealth for all purposes;*

*b. Be the same limited liability company as the limited liability company that existed under the laws of the jurisdiction or jurisdictions in which it was originally organized or formerly domesticated; and*

*c. Have been organized on the date it was originally formed or organized.*

*B. Any member of a foreign limited liability company that domesticates into this Commonwealth who, prior to the domestication, was liable for the liabilities or obligations of the limited liability company is not released from those liabilities or obligations by reason of the domestication.*

*§ 13.1-1080. Abandonment of domestication.*

*A. Unless the domestic limited liability company's articles of organization, operating agreement or the plan of domestication provides otherwise, after the domestication has been authorized and at any time before the effective date of the certificate of domestication issued by the Commission, the domestication may be abandoned by majority vote of the members of the domestic limited liability company.*

*B. If a domestication is abandoned under subsection A after articles of organization surrender have been filed with the Commission but before the certificate of organization surrender has become effective, written notice that the domestication has been abandoned in accordance with this section shall be filed with the Commission prior to the effective date of the certificate of organization surrender. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.*

*C. If the domestication of a foreign limited liability company into this Commonwealth is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the Commission but before the certificate of domestication has become effective in this Commonwealth, written notice that the domestication has been abandoned shall be filed with the Commission prior to the effective date of the certificate of domestication. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.*

*§ 15.2-5800. (Effective until January 1, 2008) Definitions; professional baseball games; consent for construction.*

*As used in this chapter the following words have the meanings indicated:*

*"Authority" means the Virginia Baseball Stadium Authority.*

*"Corporate income tax revenues" means corporate income tax as estimated by the Tax Commissioner under Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 from any team or other organization based on income generated within a facility, including revenues generated in connection with the development and construction of a facility. The Tax Commissioner shall calculate such revenues by multiplying the estimated tax payment of any corporation as required under Article 20 (§ 58.1-500 et seq.) of Chapter 3 of Title 58.1 generating income as described herein by the ratio of their gross revenues from the activities as described herein to gross revenues from all activities in Virginia.*

*"Facility" means (i) major league baseball stadiums, (ii) office, restaurant, concessions, retail, lodging, and other facilities which are owned and operated in connection with a major league baseball stadium and are located within the stadium, and (iii) any onsite parking lots and garages.*

798 "Major league baseball" means the organization which controls the administrative functions for the  
799 ownership and operation of major league baseball operations in the United States and Canada.

800 "Major league baseball franchise" means the contractual right granted by major league baseball to  
801 any person or persons to own or operate a major league baseball team in a specified location.

802 "Major league baseball stadium" means a sports facility which is designed for use primarily as a  
803 baseball stadium and which meets criteria that may be established by major league baseball.

804 "Pass-through entity tax revenues" means personal or corporate income tax as estimated by the Tax  
805 Commissioner from any individual or corporation under Article 2 (§ 58.1-320 et seq.) or Article 10  
806 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 based on gross receipts from a sole proprietorship,  
807 partnership, electing small business corporation (S corporation), limited liability ~~corporation~~ company,  
808 and any other form of pass-through entity generated within a facility. The Tax Commissioner shall  
809 calculate the estimated revenue by multiplying the gross receipts from activities described herein by two  
810 tenths of one percent.

811 "Personal income tax revenues" means personal income tax as estimated by the Tax Commissioner  
812 from individuals under Article 2 (§ 58.1-320 et seq.) of Chapter 3 of Title 58.1 based on salaries, wages,  
813 and other income generated through employment or the conduct of a trade or business within a facility,  
814 including without limitation, such taxes collected from team players, coaches, and office personnel;  
815 personnel employed by the operator of, or enterprises operating within, a facility; and personnel involved  
816 in the development and construction of a facility. The Tax Commissioner shall calculate such revenues  
817 by multiplying wages and salaries described herein by three and nine-tenths percent with respect to  
818 wages and salaries paid to team players of a major league baseball franchise based at the facility and by  
819 three and one-half percent for all other individuals described herein.

820 "Sales tax revenues" means tax collections under the Virginia Retail Sales and Use Tax Act  
821 (§ 58.1-600 et seq.), as limited herein, generated by transactions taking place upon the premises of a  
822 facility, including transactions generating revenues in connection with the development and construction  
823 of a facility. Except to the extent directed by a local governing body pursuant to § 15.2-5814, sales tax  
824 revenues shall not include any local general retail sales and use tax levied pursuant to §§ 58.1-605 and  
825 58.1-606.

826 § 50-73.46:1. Partner's transferable interest subject to charging order.

827 A. On application by a judgment creditor of a partner or of a partner's assignee, a court having  
828 jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The  
829 court may appoint a receiver of the share of the distributions due or to become due to the judgment  
830 debtor in respect of the limited partnership and make all other orders, directions, accounts, and inquiries  
831 the judgment debtor might have made or which the circumstances of the case may require. *To the extent*  
832 *so charged, the judgment creditor has only the right to receive any distribution or distributions to which*  
833 *the judgment debtor would otherwise have been entitled in respect of the interest.*

834 B. A charging order constitutes a lien on the judgment debtor's transferable interest in the limited  
835 partnership. ~~The court may order a foreclosure of the interest subject to the charging order at any time.~~  
836 ~~The purchaser at the foreclosure sale has the rights of an assignee.~~

837 C. At any time before foreclosure, an interest charged may be redeemed:

838 1. By the judgment debtor;

839 2. With property other than partnership property, by one or more of the other partners; or

840 3. With partnership property, by one or more of the other partners with the consent of all of the  
841 partners whose interests are not so charged.

842 D. This chapter does not deprive a partner or a partner's assignee of a right under exemption laws  
843 with respect to the partner's judgment debtor's interest in the limited partnership.

844 E. ~~This section provides D. The entry of a charging order is the exclusive remedy by which a~~  
845 ~~judgment creditor of a partner or of a partner's assignee may satisfy a judgment out of the judgment~~  
846 ~~debtor's transferable interest in the limited partnership.~~

847 *E. No creditor of a partner or of a partner's assignee shall have any right to obtain possession of,*  
848 *or otherwise exercise legal or equitable remedies with respect to, the property of the limited partnership.*

849 § 50-73.52:2. *Other claims against dissolved limited partnership.*

850 A. *A dissolved limited partnership may also publish notice of its dissolution and request that persons*  
851 *with claims against the dissolved limited partnership present them in accordance with the notice.*

852 B. *The notice shall:*

853 1. *Be published one time in a newspaper of general circulation in the city or county where the*  
854 *dissolved limited partnership's principal office, or, if none in the Commonwealth, its registered office, is*  
855 *or was last located;*

856 2. *Describe the information that must be included in a claim and provide a mailing address where*  
857 *the claim may be sent; and*

858 3. *State that a claim against the dissolved limited partnership will be barred unless a proceeding to*  
859 *enforce the claim is commenced prior to the earlier of the expiration of any applicable statute of*

limitations or three years after the date of publication of the notice.

C. If the dissolved limited partnership publishes a newspaper notice in accordance with subsection B, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited partnership prior to the earlier of the expiration of any applicable statute of limitations or three years after the publication date of the newspaper notice:

1. A claimant who was not given written notice under § 50-73.52:1;

2. A claimant whose claim was timely sent to the dissolved limited partnership but not acted on;

3. A claimant whose claim does not meet the definition of a claim in subsection D of § 50-73.52:1.

D. A claim that is not barred by subsection C of § 50-73.52:1 or subsection C of § 50-73.52:2 may be enforced:

1. Against the dissolved limited partnership, to the extent of its undistributed assets; or

2. Except as provided in subsection D of § 50-73.52:3, if the assets have been distributed in liquidation, against a partner of the dissolved limited partnership to the extent of the partner's pro rata share of the claim or the limited partnership assets distributed to the partner in liquidation, whichever is less, but a partner's total liability for all claims under this section may not exceed the total amount of assets distributed to the partner.

§ 50-73.52:3 Court proceedings.

A. A dissolved limited partnership that has published a notice under § 50-73.52:2 may file an application with the circuit court of the city or county where the dissolved limited partnership's principal office, or, if none in the Commonwealth, its registered office, is or was last located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved limited partnership or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved limited partnership, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection C of § 50-73.52:2.

B. Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved limited partnership to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved limited partnership.

C. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved limited partnership.

D. Provision by the dissolved limited partnership for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved limited partnership's obligations with respect to claims that do not meet the definition of a claim in subsection D of § 50-73.52:1, and such claims may not be enforced against a partner who received assets in liquidation.

§ 50-73.79. Definitions.

In this article chapter:

"Business" includes every trade, occupation, and profession.

"Commission" means the State Corporation Commission of Virginia.

"Debtor in bankruptcy" means a person who is the subject of:

(i) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) a comparable order under federal, state, or foreign law governing insolvency.

"Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

"Foreign registered limited liability partnership" means a limited liability partnership or registered limited liability partnership, or the functional equivalent thereof, formed pursuant to an agreement governed by the laws of any state or jurisdiction other than this Commonwealth and registered as a limited liability partnership under the laws of that state or jurisdiction.

"Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under § 50-73.88, predecessor law, or comparable law of another jurisdiction, and includes, for all purposes of the laws of this Commonwealth, a registered limited liability partnership.

"Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

"Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

"Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability

921 company, association, joint venture, government, governmental subdivision, agency, or instrumentality,  
922 or any other legal or commercial entity.

923 "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

924 "Registered limited liability partnership" means a partnership formed pursuant to an agreement  
925 governed by the laws of this Commonwealth and registered under § 50-73.132.

926 "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto  
927 Rico, or any territory or insular possession subject to the jurisdiction of the United States.

928 "Statement" means a statement of partnership authority under § 50-73.93, a statement of denial under  
929 § 50-73.94, a statement of dissociation under § 50-73.115, a statement of dissolution under § 50-73.121,  
930 a statement of merger under § 50-73.131, a statement of registration as a registered limited liability  
931 partnership under § 50-73.132, a statement of registration as a foreign registered limited liability  
932 partnership under § 50-73.138, an amendment or cancellation of any of the foregoing or a renewal of a  
933 statement of partnership authority.

934 "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

935 § 50-73.108. Partner's transferable interest subject to charging order.

936 A. On application by a judgment creditor of a partner or of a partner's transferee, a court having  
937 jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The  
938 court may appoint a receiver of the share of the distributions due or to become due to the judgment  
939 debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the  
940 judgment debtor might have made or which the circumstances of the case may require. *To the extent so*  
941 *charged, the judgment creditor has only the right to receive any distribution or distributions to which*  
942 *the judgment debtor would otherwise have been entitled in respect of the interest.*

943 B. A charging order constitutes a lien on the judgment debtor's transferable interest in the  
944 partnership. The court may order a foreclosure of the interest subject to the charging order at any time.  
945 The purchaser at the foreclosure sale has the rights of a transferee.

946 C. At any time before foreclosure, an interest charged may be redeemed:

947 1. By the judgment debtor;

948 2. With property other than partnership property, by one or more of the other partners; or

949 3. With partnership property, by one or more of the other partners with the consent of all of the  
950 partners whose interests are not so charged.

951 D. This chapter does not deprive a partner *or a partner's assignee* of a right under exemption laws  
952 with respect to the ~~partner's judgment debtor's~~ interest in the partnership.

953 E. ~~This section provides D.~~ *The entry of a charging order is the exclusive remedy by which a*  
954 *judgment creditor of a partner or of a partner's transferee may satisfy a judgment out of the judgment*  
955 *debtor's transferable interest in the partnership.*

956 E. *No creditor of a partner or of a partner's assignee shall have any right to obtain possession of,*  
957 *or otherwise exercise legal equitable remedies with respect to, the property of the partnership.*

958 § 50-73.117. Events causing dissolution and winding up of partnership business.

959 A partnership is dissolved, and its business shall be wound up, only upon the occurrence of any of  
960 the following events:

961 1. In a partnership at will, the partnership's having notice from a partner, other than a partner who is  
962 dissociated under subdivisions 2 through 12 of § 50-73.109, of that partner's express will to withdraw as  
963 a partner, on a later date specified by the partner in the notice or, if no later date is specified, the date  
964 of notice;

965 2. In a partnership for a definite term or particular undertaking:

966 a. ~~The expiration of~~ *Within 90 days after a partner's dissociation by death or otherwise under*  
967 *subdivisions 6 through 12 of § 50-73.109 or wrongful dissociation under subsection B of § 50-73.110,*  
968 *unless before that time a majority in interest the express will of at least one half of the remaining*  
969 *partners, including partners who have rightfully dissociated to wind up the partnership's business, for*  
970 *which purpose a partner's rightful dissociation pursuant to subdivision B 2 a of § 50-73.110, agree to*  
971 *continue constitutes the expression of that partner's will to wind up the partnership business;*

972 b. The express will of all of the partners to wind up the partnership business; or

973 c. The expiration of the term or the completion of the undertaking;

974 3. An event agreed to in the partnership agreement resulting in the winding up of the partnership  
975 business;

976 4. An event that makes it unlawful for all or substantially all of the business of the partnership to be  
977 continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective  
978 retroactively to the date of the event for purposes of this section;

979 5. On application by a partner, a judicial determination that:

980 a. The economic purpose of the partnership is likely to be unreasonably frustrated;

981 b. Another partner has engaged in conduct relating to the partnership business which makes it not  
982 reasonably practicable to carry on the business in partnership with that partner; or



c. It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

6. On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

a. After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

b. At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

*§ 50-73.137:3. Other claims against dissolved registered limited liability partnership.*

A. A dissolved partnership that is a registered limited liability partnership at the time of its dissolution may also publish notice of its dissolution and request that persons with claims against the dissolved partnership present them in accordance with the notice.

B. The notice shall:

1. Be published one time in a newspaper of general circulation in the city or county where the dissolved partnership's principal office, or, if none in the Commonwealth, its registered office, is or was last located;

2. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

3. State that a claim against the dissolved partnership will be barred unless a proceeding to enforce the claim is commenced prior to the earlier of the expiration of any applicable statute of limitations or three years after the date of publication of the notice.

C. If the dissolved partnership publishes a newspaper notice in accordance with subsection B, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved partnership prior to the earlier of the expiration of any applicable statute of limitations or three years after the publication date of the newspaper notice:

1. A claimant who was not given written notice under § 50-73.137:2;

2. A claimant whose claim was timely sent to the dissolved partnership but not acted on;

3. A claimant whose claim does not meet the definition of a claim in subsection D of § 50-73.137:2.

D. A claim that is not barred by subsection C of § 50-73.137:2 or subsection C of § 50-73.137:3 may be enforced:

1. Against the dissolved partnership, to the extent of its undistributed assets; or

2. Except as provided in subsection D of § 50-73.137:4, if the assets have been distributed in liquidation, against a partner of the dissolved partnership to the extent of the partner's pro rata share of the claim or the partnership assets distributed to the partner in liquidation, whichever is less, but a partner's total liability for all claims under this section may not exceed the total amount of assets distributed to the partner.

*§ 50-73.137:4. Court proceedings.*

A. A dissolved limited liability partnership that has published a notice under § 50-73.137:3 may file an application with the circuit court of the city or county where the dissolved partnership's principal office, or, if none in the Commonwealth, its registered office, is or was last located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved partnership or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved partnership, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection C of § 50-73.137:3.

B. Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved partnership to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved partnership.

C. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved partnership.

D. Provision by the dissolved partnership for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved partnership's obligations with respect to claims that do not meet the definition of a claim in subsection D of § 50-73.137:2, and such claims may not be enforced against a partner who received assets in liquidation.

*§ 56-1. Definitions.*

Whenever used in any chapter under this title, the following terms, words and phrases shall have the meaning and shall include what is specified in this section, unless the contrary plainly appears, that is to say:

The words "the Commission" shall mean the State Corporation Commission.

1044 The word "corporation" or "company" shall include all corporations created by acts of the General  
1045 Assembly of Virginia, or under the general incorporation laws of this Commonwealth, or doing business  
1046 therein, and shall exclude all municipal corporations, other political subdivisions, and public institutions  
1047 owned or controlled by the Commonwealth.

1048 The words "interexchange telephone service" shall mean telephone service between points in two or  
1049 more exchanges, which is not classified as local exchange telephone service.

1050 The words "Virginia limited liability company" shall mean (i) any limited liability company  
1051 organized under Chapter 12 (§ 13.1-1000 et seq.) of Title 13.1, ~~or~~ (ii) *any entity that has become a*  
1052 *limited liability company pursuant to Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9 of Title 13.1 or*  
1053 *pursuant to conversion or domestication under Chapter 12 (§ 13.1-1000 et seq.) of Title 13.1, or (iii)*  
1054 *any foreign limited liability company that is organized or is domesticated by filing articles of*  
1055 *organization that meet the requirements of §§ 13.1-1003 and 13.1-1011 and include (a) the name of the*  
1056 *foreign limited liability company immediately prior to the filing of the articles of organization; (b) the*  
1057 *date on which and the jurisdiction in which the foreign limited liability company was first formed,*  
1058 *organized, created or otherwise came into being; and (c) the jurisdiction that constituted the seat, siege*  
1059 *social, or principal place of business or central administration of the foreign limited liability company,*  
1060 *or any equivalent thereto under applicable law, immediately prior to the filing of the articles of*  
1061 *organization. The* ~~With respect to an organization or domestication pursuant to clause (iii), the terms~~  
1062 ~~and conditions of a domestication of a foreign limited liability company as a limited liability company~~  
1063 ~~shall be approved in the manner provided for by the document, instrument, agreement or other writing,~~  
1064 ~~as the case may be, governing the internal affairs of the foreign limited liability company in the conduct~~  
1065 ~~of its business or by applicable law other than the law of this Commonwealth, as appropriate. The, and~~  
1066 ~~the provisions governing the status, powers, obligations, and choice of law applicable under~~  
1067 ~~§ 13.1-1010.3 shall apply to any limited liability company so domesticated or organized in accordance~~  
1068 ~~with this process.~~

1069 The words "local exchange telephone service" shall mean telephone service provided in a  
1070 geographical area established for the administration of communication services and consists of one or  
1071 more central offices together with associated facilities which are used in providing local exchange  
1072 service. Local exchange service, as opposed to interexchange service, consists of telecommunications  
1073 between points within an exchange or between exchanges which are within an area where customers  
1074 may call at rates and charges specified in local exchange tariffs filed with the Commission.

1075 The word "person" shall include individuals, partnerships, *limited liability companies*, and  
1076 corporations.

1077 The words "public service corporation" or "public service company" shall include gas, pipeline,  
1078 electric light, heat, power and water supply companies, sewer companies, telephone companies, telegraph  
1079 companies, and all persons authorized to transport passengers or property as a common carrier. "Public  
1080 service corporation" or "public service company" shall not include a municipal corporation, other  
1081 political subdivision or public institution owned or controlled by the Commonwealth; however, if such  
1082 an entity has obtained a certificate to provide services pursuant to § 56-265.4:4, then such entity shall be  
1083 deemed to be a public service corporation or public service company and subject to the authority of the  
1084 Commission with respect only to its provision of the services it is authorized to provide pursuant to  
1085 such certificate.

1086 The word "railroad" shall include all railroad or railway lines, whether operated by steam, electricity,  
1087 or other motive power, except when otherwise specifically designated.

1088 The words "railroad company" shall include any company, trustee or other person owning, leasing or  
1089 operating a railroad.

1090 The word "rate" shall be considered to mean "rate charged for any service rendered or to be  
1091 rendered."

1092 The words "rate," "charge" and "regulation" shall include joint rates, joint charges and joint  
1093 regulations, respectively.

1094 The words "transportation company" shall include any railroad company, any company transporting  
1095 express by railroad, and any ship or boat company.

1096 § 58.1-2201. Definitions.

1097 As used in this chapter, unless the context requires otherwise:

1098 "Alternative fuel" means a combustible gas, liquid or other energy source that can be used to  
1099 generate power to operate a highway vehicle and that is not a motor fuel.

1100 "Assessment" means a written determination by the Department of the amount of taxes owed by a  
1101 taxpayer. Assessments made by the Department shall be deemed to be made when a written notice of  
1102 assessment is delivered to the taxpayer by the Department or is mailed by certified or registered mail to  
1103 the taxpayer at the last known address appearing in the Commissioner's files.

1104 "Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation jet fuel in  
1105 any fiscal year and is licensed pursuant to Article 2 (§ 58.1-2204 et seq.) of this chapter.

- 1106 "Aviation fuel" means aviation gasoline or aviation jet fuel.
- 1107 "Aviation gasoline" means fuel designed for use in the operation of aircraft other than jet aircraft,  
1108 and sold or used for that purpose.
- 1109 "Aviation jet fuel" means fuel designed for use in the operation of jet or turbo-prop aircraft, and sold  
1110 or used for that purpose.
- 1111 "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a  
1112 de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as  
1113 a fuel in a highway vehicle.
- 1114 "Blender" means a person who produces blended fuel outside the terminal transfer system.
- 1115 "Bonded aviation jet fuel" means aviation jet fuel held in bonded storage under United States  
1116 Customs Law and delivered into a fuel tank of aircraft operated by certificated air carriers on  
1117 international flights.
- 1118 "Bonded importer" means a person, other than a supplier, who imports, by transport truck or another  
1119 means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in  
1120 another state in which (i) the state from which the fuel is imported does not require the seller of the fuel  
1121 to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state; (ii)  
1122 the supplier of the fuel is not an elective supplier; or (iii) the supplier of the fuel is not a permissive  
1123 supplier.
- 1124 "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from  
1125 which motor fuel may be removed at a rack.
- 1126 "Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the  
1127 stored fuel to operate a highway vehicle, watercraft, or aircraft.
- 1128 "Bulk user of alternative fuel" means a person who maintains storage facilities for alternative fuel  
1129 and uses part or all of the stored fuel to operate a highway vehicle.
- 1130 "Commercial watercraft" means a watercraft employed in the business of commercial fishing,  
1131 transporting persons or property for compensation or hire, or any other trade or business unless the  
1132 watercraft is used in an activity of a type generally considered entertainment, amusement, or recreation.
- 1133 "Commissioner" means the Commissioner of the Department of Motor Vehicles.
- 1134 "Corporate or partnership officer" means an officer or director of a corporation, partner of a  
1135 partnership, or member of a limited liability company, who as such officer, director, partner or member  
1136 is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax  
1137 collection, accounting, or remitting obligations.
- 1138 "Department" means the Department of Motor Vehicles, acting directly or through its duly authorized  
1139 officers and agents.
- 1140 "Designated inspection site" means any state highway inspection station, weigh station, agricultural  
1141 inspection station, mobile station, or other location designated by the Commissioner or his designee to  
1142 be used as a fuel inspection site.
- 1143 "Destination state" means the state, territory, or foreign country to which motor fuel is directed for  
1144 delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the  
1145 purpose of resale or use. The term shall not include a tribal reservation of any recognized Native  
1146 American tribe.
- 1147 "Diesel fuel" means any liquid that is suitable for use as a fuel in a diesel-powered highway vehicle  
1148 or watercraft. The term shall include undyed #1 fuel oil and undyed #2 fuel oil, but shall not include  
1149 gasoline or aviation jet fuel.
- 1150 "Distributor" means a person who acquires motor fuel from a supplier or from another distributor for  
1151 subsequent sale.
- 1152 "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C.  
1153 § 4082.
- 1154 "Elective supplier" means a supplier who (i) is required to be licensed in the Commonwealth and (ii)  
1155 elects to collect the tax due the Commonwealth on motor fuel that is removed at a terminal located in  
1156 another state and has Virginia as its destination state.
- 1157 "End seller" means the person who sells fuel to the ultimate user of the fuel.
- 1158 "Export" means to obtain motor fuel in Virginia for sale or distribution in another state, territory, or  
1159 foreign country. Motor fuel delivered out-of-state by or for the seller constitutes an export by the seller,  
1160 and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.
- 1161 "Exporter" means a person who obtains motor fuel in Virginia for sale or distribution in another  
1162 state, territory, or foreign country.
- 1163 "Fuel" includes motor fuel and alternative fuel.
- 1164 "Fuel alcohol" means methanol or fuel grade ethanol.
- 1165 "Fuel alcohol provider" means a person who (i) produces fuel alcohol or (ii) imports fuel alcohol  
1166 outside the terminal transfer system by means of a marine vessel, a transport truck, a tank wagon, or a

- 1167 railroad tank car.
- 1168 "Gasohol" means a blended fuel composed of gasoline and fuel grade ethanol.
- 1169 "Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and  
1170 are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have  
1171 an American Society for Testing Materials octane number of less than 75 as determined by the motor  
1172 method; (ii) a petroleum product component of gasoline, such as naphtha, reformat, or toluene; (iii)  
1173 gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an  
1174 aircraft engine.
- 1175 "Governmental entity" means (i) the Commonwealth or any political subdivision thereof or (ii) the  
1176 United States or its departments, agencies, and instrumentalities.
- 1177 "Gross gallons" means an amount of motor fuel measured in gallons, exclusive of any temperature,  
1178 pressure, or other adjustments.
- 1179 "Heating oil" means any combustible liquid, including but not limited to dyed #1 fuel oil, dyed #2  
1180 fuel oil, and kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial  
1181 processing purposes.
- 1182 "Highway" means every way or place of whatever nature open to the use of the public for purposes  
1183 of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.
- 1184 "Highway vehicle" means a self-propelled vehicle designed for use on a highway.
- 1185 "Import" means to bring motor fuel into Virginia by any means of conveyance other than in the fuel  
1186 supply tank of a highway vehicle. Motor fuel delivered into Virginia from out-of-state by or for the  
1187 seller constitutes an import by the seller, and motor fuel delivered into Virginia from out-of-state by or  
1188 for the purchaser constitutes an import by the purchaser.
- 1189 "Importer" means a person who obtains motor fuel outside of Virginia and brings that motor fuel  
1190 into Virginia by any means of conveyance other than in the fuel tank of a highway vehicle. For  
1191 purposes of this chapter, a motor fuel transporter shall not be considered an importer.
- 1192 "In-state-only supplier" means (i) a supplier who is required to have a license and who elects not to  
1193 collect the tax due the Commonwealth on motor fuel that is removed by that supplier at a terminal  
1194 located in another state and has Virginia as its destination state or (ii) a supplier who does business only  
1195 in Virginia.
- 1196 "Licensee" means any person licensed by the Commissioner pursuant to Article 2 (§ 58.1-2204 et  
1197 seq.) of this chapter or § 58.1-2244.
- 1198 "Liquid" means any substance that is liquid above its freezing point.
- 1199 "Motor fuel" means gasoline, diesel fuel, blended fuel, and aviation fuel.
- 1200 "Motor fuel transporter" means a person who transports motor fuel for hire by means of a pipeline, a  
1201 tank wagon, a transport truck, a railroad tank car, or a marine vessel.
- 1202 "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of  
1203 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch.
- 1204 "Occasional importer" means any person who (i) imports motor fuel by any means outside the  
1205 terminal transfer system and (ii) is not required to be licensed as a bonded importer.
- 1206 "Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a  
1207 supplier's license under this chapter.
- 1208 "Person" means any individual; firm; cooperative; association; corporation; limited liability  
1209 corporation ~~company~~; trust; business trust; syndicate; partnership; limited liability partnership; joint  
1210 venture; receiver; trustee in bankruptcy; club, society or other group or combination acting as a unit; or  
1211 public body, including but not limited to the Commonwealth, any other state, and any agency,  
1212 department, institution, political subdivision or instrumentality of the Commonwealth or any other state.
- 1213 "Position holder" means a person who holds an inventory position of motor fuel in a terminal, as  
1214 reflected on the records of the terminal operator. A person holds an "inventory position of motor fuel"  
1215 when he has a contract with the terminal operator for the use of storage facilities and terminaling  
1216 services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.
- 1217 "Principal" means (i) if a partnership, all its partners; (ii) if a corporation, all its officers, directors,  
1218 and controlling direct or indirect owners; (iii) if a limited liability company, all its members; and (iv) or  
1219 an individual.
- 1220 "Provider of alternative fuel" means a person who (i) acquires alternative fuel for sale or delivery to  
1221 a bulk user or a retailer; (ii) maintains storage facilities for alternative fuel, part or all of which the  
1222 person sells to someone other than a bulk user or a retailer to operate a highway vehicle; (iii) sells  
1223 alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a  
1224 fuel supply line from the cargo tank of the vehicle to the engine of the vehicle; or (iv) imports  
1225 alternative fuel into Virginia, by a means other than the usual tank or receptacle connected with the  
1226 engine of a highway vehicle, for sale or use by that person to operate a highway vehicle.
- 1227 "Rack" means a facility that contains a mechanism for delivering motor fuel from a refinery,  
1228 terminal, or bulk plant into a transport truck, railroad tank car, or other means of transfer that is outside

1229 the terminal transfer system.

1230 "Refiner" means any person who owns, operates, or otherwise controls a refinery.

1231 "Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum  
1232 products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel  
1233 or at a rack.

1234 "Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical  
1235 transfer to a transport truck or other means of conveyance outside the terminal transfer system is  
1236 complete upon delivery into the means of conveyance.

1237 "Retailer" means a person who (i) maintains storage facilities for motor fuel and (ii) sells the fuel at  
1238 retail or dispenses the fuel at a retail location.

1239 "Retailer of alternative fuel" means a person who (i) maintains storage facilities for alternative fuel  
1240 and (ii) sells or dispenses the fuel at retail, to be used to generate power to operate a highway vehicle.

1241 "Supplier" means (i) a position holder, or (ii) a person who receives motor fuel pursuant to a  
1242 two-party exchange. A licensed supplier includes a licensed elective supplier and licensed permissive  
1243 supplier.

1244 "System transfer" means a transfer (i) of motor fuel within the terminal transfer system or (ii) of fuel  
1245 grade ethanol by transport truck or railroad tank car.

1246 "Tank wagon" means a straight truck or straight truck/trailer combination designed or used to carry  
1247 fuel and having a capacity of less than 6,000 gallons.

1248 "Terminal" means a motor fuel storage and distribution facility (i) to which a terminal control  
1249 number has been assigned by the Internal Revenue Service, (ii) to which motor fuel is supplied by  
1250 pipeline or marine vessel, and (iii) from which motor fuel may be removed at a rack.

1251 "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

1252 "Terminal transfer system" means a motor fuel distribution system consisting of refineries, pipelines,  
1253 marine vessels, and terminals, and which is a "bulk transfer/terminal system" under 26 C.F.R. Part  
1254 48.4081-1.

1255 "Transmix" means (i) the buffer or interface between two different products in a pipeline shipment or  
1256 (ii) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

1257 "Transport truck" means a tractor truck/semitrailer combination designed or used to transport cargoes  
1258 of motor fuel over a highway.

1259 "Trustee" means a person who (i) is licensed as a supplier, an elective supplier, or a permissive  
1260 supplier and receives tax payments from and on behalf of a licensed or unlicensed distributor, or other  
1261 person pursuant to § 58.1-2231 or (ii) is licensed as a provider of alternative fuel and receives tax  
1262 payments from and on behalf of a bulk user of alternative fuel, retailer of alternative fuel or other  
1263 person pursuant to § 58.1-2252.

1264 "Two-party exchange" means a transaction in which fuel is transferred from one licensed supplier to  
1265 another licensed supplier pursuant to an exchange agreement, which transaction (i) includes a transfer  
1266 from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on  
1267 the records of the terminal operator and (ii) is completed prior to removal of the product from the  
1268 terminal by the receiving exchange partner.

1269 "Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental  
1270 Protection Agency or Internal Revenue Service fuel-dyeing requirements.

1271 "Use" means the actual consumption or receipt of motor fuel by any person into a highway vehicle,  
1272 aircraft, or watercraft.

1273 "Watercraft" means any vehicle used on waterways.

1274 **2. That the provisions of this act amending and reenacting §§ 13.1-1005 and 13.1-1067 of the Code**  
1275 **of Virginia and adding Article 14 (§ 13.1-1074 et seq.) in Chapter 12 of Title 13.1 of the Code of**  
1276 **Virginia shall become effective on November 1, 2006.**