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HOUSE BILL NO. 780

Offered January 9, 2008

Prefiled January 8, 2008

A *BILL to amend and reenact §§ 50-73.12, 50-73.15, 50-73.17, 50-73.48:3, 50-73.49, 50-73.50, 50-73.51, 50-73.57, 50-73.57:2, 50-73.69, and 50-73.77; to amend the Code of Virginia by adding in Article 8 of Chapter 2.1 of Title 50 sections numbered 50-73.52:4, 50-73.52:5, 50-73.52:6, and 50-73.52:7 and by adding 50-73.58:1, 50-73.58:2, and 50-73.58:3; and to repeal § 50-73.13 of the Code of Virginia, relating to the Revised Uniform Limited Partnership Act.*

Patrons—Kilgore, Athey, Carrico, Landes, Massie and Sherwood

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 50-73.12, 50-73.15, 50-73.17, 50-73.48:3, 50-73.49, 50-73.50, 50-73.51, 50-73.57, 50-73.57:2, 50-73.69, and 50-73.77 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 8 of Chapter 2.1 of Title 50 sections numbered 50-73.52:4, 50-73.52:5, 50-73.52:6, and 50-73.52:7 and by adding sections numbered 50-73.58:1, 50-73.58:2, and 50-73.58:3 as follows:

§ 50-73.12. Amendment of certificate.

A. A certificate of limited partnership is amended by filing with the Commission a certificate of amendment setting forth:

1. The name of the limited partnership;
2. The date of filing of the initial certificate of limited partnership; and
3. The amendment to the certificate.

B. Within 30 days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

1. The admission of a new general partner;
2. The withdrawal of a general partner;
3. The continuation of the business under § 50-73.49 after an event of withdrawal of a general partner;

4. A change in the name of the limited partnership or the address of the specified office; or

5. One or more liquidating trustees commence the winding up of the affairs of the limited partnership, in which event the certificate of amendment shall include the name and the business, residence or mailing address of each liquidating trustee.

C. A general partner who becomes aware that any material statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any material respect, shall promptly amend the certificate.

D. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

E. *An amendment to a certificate of limited partnership may delete the name of the initial registered agent and the address of the initial registered office if a statement of change described in § 50-73.5 is on file with the Commission.*

F. If an amendment to a certificate of limited partnership is filed in compliance with subsection B of this section, no person shall be subject to liability because the amendment was not filed earlier.

FG. A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

GH. A liquidating trustee shall not be subject to liability as a general partner by reason of the execution and filing of a certificate of amendment required by this section.

HI. Upon the effective date and time of a certificate of amendment as provided by § 50-73.17, the certificate of limited partnership shall be amended as set forth therein.

§ 50-73.15. Execution of documents.

A. ~~Each certificate~~ *Certificates and articles* required or permitted by this ~~article~~ *chapter* to be filed as specified in ~~§§ 50-73.11 through 50-73.13 and articles of merger referred to in § 50-73.48:3 with the Commission by a limited partnership~~ shall be executed in the following manner:

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

2. A certificate of amendment shall be signed by (i) ~~by~~ at least one general partner and by each other general partner designated in the certificate as a new general partner or (ii) after the dissolution of a

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59 limited partnership but before the filing of a certificate of cancellation as ~~provided in § 50-73.13~~, if all
60 general partners have withdrawn or if the general partners named in the certificate of limited partnership
61 are not winding up the affairs of the limited partnership, by each liquidating trustee;

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

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

66 B. Every person executing a document *required or permitted by this chapter to be filed with the*
67 *Commission* shall sign it and ~~state set forth~~ beneath or opposite his signature his name and the capacity
68 in which he executes the document. ~~Any~~ A signature *on any document filed under this chapter* may be a
69 facsimile. Any person may sign a certificate by an attorney-in-fact.

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

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

77 § 50-73.17. Filing; fees; effective time and date.

78 A. 1. One signed copy of the certificate of limited partnership, of any amended and restated
79 certificate referred to in § 50-73.77, of any certificate of amendment or cancellation, of any restated
80 certificate of limited partnership or of any articles of merger shall be delivered to the Commission for
81 filing and shall be accompanied by the required filing fee.

82 2. Any document delivered to the Commission for filing shall be typewritten or printed in black.
83 Photocopies, or other reproduced copies, of typewritten or printed certificates may be filed. In every
84 case, information in the document shall be legible and the document shall be capable of being
85 reformatted and reproduced in copies of archival quality.

86 3. The document shall be in the English language. A limited partnership name need not be in English
87 if written in English letters or Arabic or Roman numerals. The certificate of limited partnership or
88 partnership agreement, duly authenticated by the official having custody of the applicable records in the
89 state or other jurisdiction under whose law the limited partnership is formed, which is required of
90 foreign limited partnerships, need not be in English if accompanied by a reasonably authenticated
91 English translation.

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

94 5. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his
95 authority as a prerequisite to filing. If the Commission finds that the certificate complies with the
96 provisions of this chapter, that it has been signed as required by this chapter, and that the required filing
97 fee has been paid, it shall file the certificate and admit it to record in its office. ~~A signature on any~~
98 ~~document filed under this chapter may be a facsimile.~~

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

102 B. The Commission shall charge and collect the following fees:

103 1. For filing any one of the following, the fee shall be \$10:

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

106 b. A notice of the transfer of a name reserved for the use by a domestic or a foreign limited
107 partnership; and

108 c. A certificate declaring withdrawal referred to in § 50-73.25.

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

110 a. A certificate of limited partnership referred to in § 50-73.11 or 50-73.11:3;

111 b. An application for registration as a foreign limited partnership; *and*

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

113 3. For filing any one of the following, the fee shall be \$25:

114 a. A certificate of amendment referred to in § 50-73.12;

115 b. A restated certificate of limited partnership referred to in § 50-73.12;

116 c. ~~A certificate of correction~~ *copy of an amendment or correction* referred to in § 50-73.57, *or an*
117 *amended application referred to in § 50-73.57, provided that an amended application shall not require a*
118 *separate fee when it is filed with a copy of an amendment or a correction referred to in § 50-73.57;*

119 d. Articles of merger referred to in § 50-73.48:3;

120 e. An instrument of merger referred to in § 50-73.57:2;

- f. An instrument of entity conversion referred to in § 50-73.57:3;
- g. A certificate of cancellation referred to in § ~~50-73.13~~ 50-73.52:4; and
- h. A certificate of cancellation referred to in § 50-73.58.

4. For issuing a certificate pursuant to § 50-73.76:1, the fee shall be \$6.

C. 1. A certificate filed with or issued by the Commission pursuant to the provisions of this chapter is effective at the time such certificate is filed or issued unless the certificate or articles to which the certificate relates are filed on behalf of a limited partnership and state that they shall become effective at a later time and date. In that event, the certificate shall become effective at the earlier of the time and date so specified or 11:59 p.m. on the fifteenth day after the date on which the certificate is filed with or issued by the Commission. Any other document filed with the Commission shall be effective when accepted for filing unless otherwise provided for in this chapter.

2. Notwithstanding subdivision 1 of this subsection, *as to* any certificate that has a delayed effective time and date ~~shall not become effective~~ if, prior to the effective time and date, a party to which the certificate relates files a request for cancellation with the Commission ~~and~~, the Commission, ~~by order,~~ *cancel* ~~shall cancel the certificate and it shall not become effective.~~

3. Notwithstanding subdivision 1 of this subsection, for purposes of §§ 50-73.2 and 50-73.56, any certificate that has a delayed effective date shall be deemed to be effective when the certificate is filed *or, in the case of a certificate of merger, issued.*

§ 50-73.48:3. Articles of merger.

A. After a plan of merger is approved by each domestic or foreign limited partnership, limited liability company, business trust or corporation that is a party to the merger, the surviving domestic or foreign partnership, limited partnership, limited liability company, business trust or corporation shall file with the Commission articles of merger executed by each party to the merger setting forth:

1. The plan of merger;

2. If the surviving entity of the merger is a foreign limited liability partnership not registered with the Commission pursuant to § 50-73.138, a foreign limited partnership without a certificate of registration issued by the Commission pursuant to § 50-73.54, a foreign limited liability company without a certificate of registration issued by the Commission pursuant to § 13.1-1052, a foreign business trust without a certificate of registration issued by the Commission pursuant to § 13.1-1242 or a foreign corporation without a certificate of authority issued by the Commission pursuant to § 13.1-759, the address, including street and number, if any, of its principal office under the laws of the jurisdiction in which it was formed, organized or incorporated;

3. A statement that the plan of merger was adopted by each domestic partnership party to the merger in accordance with § 50-73.128, each domestic limited partnership party to the merger in accordance with § 50-73.48:2, each domestic business trust party to the merger in accordance with § 13.1-1258, and by each domestic limited liability company party to the merger in accordance with § 13.1-1071; and

4. If a domestic corporation is a party to the merger, any additional information required by § 13.1-720.

B. If a foreign partnership, limited partnership, limited liability company, business trust or corporation is a party to the merger, the articles of merger ~~may~~ *shall* contain a statement that the merger is permitted by the state or other jurisdiction under whose law ~~that the~~ partnership, limited partnership or business trust is formed, ~~that the~~ limited liability company is organized or ~~that the~~ corporation is incorporated and that the foreign partnership, limited partnership, limited liability company, business trust or corporation has complied with that law in effecting the merger. ~~If such a statement is included in the articles of merger, a surviving limited partnership, limited liability company, business trust or corporation shall not be required to file with the Commission any copy of a duly authenticated instrument of merger that would otherwise be required pursuant to §§ 13.1-766.1, 13.1-1060, 13.1-1250 or § 50-73.57:2, as the case may be.~~

C. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger, which shall become effective pursuant to the provisions of subsection ~~D~~ C of § 50-73.17.

D. A certificate of merger shall act as a certificate of cancellation as described in § ~~50-73.13~~ 50-73.52:4 for a domestic limited partnership that is not the surviving ~~entity of party to~~ the merger, and ~~that such~~ limited partnership's ~~certificate of limited partnership existence~~ shall be canceled upon the effective time and date of the certificate of merger.

§ 50-73.49. Dissolution generally.

A limited partnership formed under this chapter or that has filed an amended and restated certificate of limited partnership in compliance with subsection D of § 50-73.77 is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

1. At the time or upon the occurrence of any events specified in the certificate of limited partnership or in writing in the partnership agreement;

2. Upon the unanimous written consent of the partners;

3. Upon an event of withdrawal of a general partner unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal, if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired;

4. Entry of a decree of judicial dissolution under § 50-73.50; ~~or~~

5. Automatic cancellation of ~~the certificate of limited partnership~~ *its existence* pursuant to § 50-73.69 50-73.52:5; or

6. *Involuntary cancellation of its existence pursuant to § 50-73.52:6.*

§ 50-73.50. Judicial dissolution.

A. On application by or for a partner, the circuit court ~~as specified in § 50-73.16~~ *of the locality in which the registered office is located* may decree dissolution of a limited partnership if it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

B. *When the winding up of the affairs of the limited partnership has been completed, the court shall so advise the Commission, which shall enter an order of cancellation of the limited partnership's existence.*

§ 50-73.51. Winding up.

A. *The winding up of a limited partnership shall be completed when all debts, liabilities, and obligations of the limited partnership have been paid and discharged or reasonable adequate provision therefor has been made, and all of the remaining property and assets of the limited partnership have been distributed to the partners.*

B. Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, or a person or persons approved by the limited partners, or if there is more than one class of limited partners, then as approved by each such class, by the affirmative vote of limited partners holding more than ~~fifty~~ 50 percent of the then current interests in the profits of the limited partnership owned by all limited partners or by the limited partners in each class, as appropriate, may wind up the limited partnership's affairs; ~~but~~ *however*, the circuit court ~~as specified in § 50-73.16~~ *upon of the locality in which the registered office is located*, on cause shown, may wind up the limited partnership's affairs ~~upon~~ on application of any partner, his legal representative, or assignee, and in connection therewith, may appoint one or more liquidating trustees.

B C. Upon dissolution of a limited partnership and until the ~~filing effective date~~ *of a certificate of cancellation as provided in § 50-73.13* filed pursuant to § 50-73.52:4, the liquidating trustees, in the name and on behalf of the limited partnership, may (i) prosecute and defend suits, whether civil, criminal or administrative, (ii) wind up the limited partnership's business, (iii) dispose of and convey the limited partnership's property, (iv) discharge or make reasonable provision for the limited partnership's liabilities, and (v) distribute to the partners any remaining assets of the limited partnership, all without affecting the liability of limited partners and without imposing the liability of a general partner on a liquidating trustee.

§ 50-73.52:4. Certificate of cancellation.

A. *When the affairs of a limited partnership have been wound up pursuant to § 50-73.51, it shall file a certificate of cancellation with the Commission. The certificate shall set forth:*

1. *The name of the limited partnership;*

2. *The effective date of its certificate of limited partnership;*

3. *The reason for filing the certificate of cancellation;*

4. *A statement that the limited partnership has completed the winding up of its affairs; and*

5. *Any other information the partners determine to include therein.*

B. *If the Commission finds that the certificate of cancellation complies with the requirements of law and that all required fees have been paid, it shall file the certificate of cancellation, canceling the limited partnership's existence. Upon the effective date of such certificate, the existence of the limited partnership shall cease, except for the purpose of suits, other proceedings, and appropriate actions by general partners and limited partners as provided in this chapter.*

§ 50-73.52:5. Automatic cancellation of limited partnership existence.

A. *If any limited partnership fails to pay its annual registration fee on or before December 31 of the year assessed, its existence shall be automatically canceled as of that day.*

B. *If any limited partnership whose registered agent has filed with the Commission a statement of resignation pursuant to § 50-73.6 fails to file a statement of change pursuant to § 50-73.5 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the limited partnership of impending cancellation of its existence. If the limited partnership fails to file the statement of change on or before the last day of the second month immediately following the month*

in which the impending cancellation notice was mailed, the existence of the limited partnership shall be automatically canceled as of that day.

C. The properties and affairs of a limited partnership whose existence has been canceled pursuant to this section shall pass automatically to its general partners as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited partnership; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its partners; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its partners according to their respective rights and interests.

D. No partner or other agent of a limited partnership shall have any personal obligation for any liabilities of the limited partnership, whether such liabilities arise in contract, tort, or otherwise, solely by reason of the cancellation of the limited partnership's existence pursuant to this section.

§ 50-73.52:6. Involuntary cancellation of limited partnership existence.

A. The existence of a limited partnership may be canceled involuntarily by order of the Commission when it finds that the limited partnership has:

1. Continued to exceed or abuse the authority conferred on it by law;
2. Failed to maintain a registered office or a registered agent in the Commonwealth as required by law; or
3. Failed to file any document required by this chapter to be filed with the Commission.

B. Before entering any such order, the Commission shall issue a rule against the limited partnership giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

C. The properties and affairs of a limited partnership whose existence has been canceled pursuant to this section shall pass automatically to its general partners as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited partnership; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its partners; (iii) pay, satisfy, and discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its partners according to their respective rights and interests.

§ 50-73.52:7. Reinstatement of a limited partnership that has ceased to exist.

A. A limited partnership that has ceased to exist may apply to the Commission for reinstatement within five years thereafter, unless the cancellation was by order of the Commission (i) entered pursuant to subdivision A 1 of § 50-73.52:6 or (ii) entered pursuant to § 50-73.50 and the circuit court's decree directing dissolution contains no provision for reinstatement of the existence of the limited partnership.

B. To have the certificate of limited partnership reinstated, a limited partnership shall provide the Commission with the following:

1. An application for reinstatement signed by a general partner of the limited partnership or, if there are no general partners, a limited partner, which may be in the form of a letter;
2. A reinstatement fee of \$100;
3. All annual registration fees required by § 50-73.67 and penalties that were due before the certificate of limited partnership was canceled and that would have been assessed or imposed to the date of reinstatement if the limited partnership's certificate of limited partnership had not been canceled;
4. If the name of the limited partnership does not comply with the provisions of § 50-73.2 at the time of reinstatement, an amendment to the certificate of limited partnership to change the limited partnership's name to a name that satisfies the provisions of § 50-73.2, with the fee required by this chapter for the filing of an amendment to the certificate of limited partnership; and
5. If the limited partnership's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 50-73.5.

C. If the limited partnership complies with the provisions of this section, the Commission shall enter an order of reinstatement of existence. Upon entry of the order, the existence of the limited partnership shall be deemed to have continued from the date of the cancellation as if cancellation had never occurred, and any liability incurred by the limited partnership or a partner or other agent after the cancellation and before the reinstatement is determined as if cancellation of the limited partnership's existence had never occurred.

§ 50-73.57. Amendments; amended applications for registration.

A. Whenever the certificate of limited partnership or, if there is no such certificate, partnership agreement or other constituent document of a foreign limited partnership that is registered to transact business in the Commonwealth is amended or corrected, the foreign limited partnership shall promptly file with the Commission a copy of the amendment or correction duly authenticated by the Secretary of

305 *State or other official having custody of the limited partnership records in the state or other jurisdiction*
306 *of its formation.*

307 *B. If any statement in the application for registration of a foreign limited partnership was false when*
308 *made or any arrangements or other facts described have changed, making the application inaccurate in*
309 *any respect, the foreign limited partnership shall promptly file with the Commission a ~~certificate an~~*
310 *amended application for registration, executed by a general partner, ~~correcting amending~~ such statement,*
311 *accompanied by a copy of the document, if any, effecting the correction or change duly authenticated by*
312 *the Secretary of State or other official having custody of the limited partnership records in the state or*
313 *other jurisdiction of its formation or information. The certificate may take the form of an amended and*
314 *restated application for registration shall be made on a form prescribed and furnished by the*
315 *Commission.*

316 *§ 50-73.57:2. Merger of foreign limited partnership registered to transact business in Commonwealth.*

317 *A. Whenever a foreign limited partnership that is registered to transact business in the*
318 *Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under*
319 *whose laws it is formed, and that limited partnership is the surviving entity of the merger, it shall,*
320 *within 30 days after the merger becomes effective, file with the Commission a copy of the instrument of*
321 *merger duly authenticated by the Secretary of State or other official having custody of limited*
322 *partnership records in the state or other jurisdiction under whose laws the merger was effected.*
323 *However, the filing shall not be required when a foreign limited partnership merges with a domestic*
324 *corporation, limited liability company, limited partnership, business trust, or partnership; the foreign*
325 *limited partnership's certificate of limited partnership or, if there is no such certificate, partnership*
326 *agreement or other constituent document, is not amended by the merger; and the articles or statement of*
327 *merger filed on behalf of the domestic corporation, limited liability company, limited partnership,*
328 *business trust, or partnership pursuant to § 13.1-720, 13.1-1072, 13.1-1261, 50-73.48:3, or 50-73.131*
329 *contains a statement that the merger is permitted under the laws of the state or other jurisdiction in*
330 *which the foreign limited partnership is formed and that the foreign limited partnership has complied*
331 *with that law in effecting the merger.*

332 *B. Whenever a foreign limited partnership that is registered to transact business in the*
333 *Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under the*
334 *laws of which it is formed, and that limited partnership is not the surviving entity of the merger, the*
335 *surviving partnership, limited partnership, limited liability company, business trust, or corporation shall,*
336 *if not continuing to transact business in the Commonwealth, within 30 days after the merger becomes*
337 *effective, deliver to the Commission a copy of the instrument of merger duly authenticated by the*
338 *Secretary of State or other official having custody of limited partnership records in the state or other*
339 *jurisdiction under whose laws the merger was effected, and comply in behalf of the predecessor limited*
340 *partnership with § 50-73.58. If a surviving business trust, registered limited liability partnership, limited*
341 *partnership, limited liability company or corporation is to continue to transact business in the*
342 *Commonwealth and has not registered with the Commission as a foreign registered limited liability*
343 *partnership under § 50-73.138, as a foreign limited partnership under § 50-73.54, as a foreign business*
344 *trust under § 13.1-1242, or as a foreign limited liability company under § 13.1-1052 or received a*
345 *certificate of authority to transact business in the Commonwealth as a foreign corporation, as the case*
346 *may be, it shall, within 30 days after the merger becomes effective, deliver to the Commission an*
347 *application, if a foreign registered limited liability partnership, for registration as a foreign registered*
348 *limited liability partnership, if a foreign limited partnership, for registration as a foreign limited*
349 *partnership, if a foreign limited liability company, for registration as a foreign limited liability company,*
350 *if a foreign business trust, for registration as a foreign business trust, or, if a foreign corporation, for a*
351 *certificate of authority to transact business in the Commonwealth, together with a duly authenticated*
352 *copy of the instrument of merger and also a copy of its partnership certificate, statement of registered*
353 *limited liability partnership, certificate of limited partnership, articles of organization, articles of trust, or*
354 *articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or*
355 *other official having custody of registered limited liability partnership, limited partnership, limited*
356 *liability company, business trust, or corporate records in the state or other jurisdiction under whose laws*
357 *it is formed, organized, registered, or incorporated.*

358 *C. Upon the merger of a foreign limited partnership with one or more foreign partnerships, limited*
359 *partnerships, limited liability companies, business trusts, or corporations, all property in the*
360 *Commonwealth owned by the foreign limited partnership shall pass to the surviving foreign partnership,*
361 *limited partnership, limited liability company, business trust, or corporation except as otherwise provided*
362 *by the laws of the state or other jurisdiction by which it is governed, but only from and after the time*
363 *when a duly authenticated copy of the instrument of merger is filed with the Commission.*

364 *§ 50-73.58:1. Automatic cancellation of certificate of registration.*

365 *A. If any foreign limited partnership fails to pay its annual registration fee on or before December*
366 *31 of the year assessed, its certificate of registration shall be automatically canceled as of that day.*

B. If any foreign limited partnership whose registered agent has filed with the Commission a statement of resignation pursuant to § 50-73.6 fails to file a statement of change pursuant to § 50-73.5 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the limited partnership of impending cancellation of its certificate of registration. If the limited partnership fails to file the statement of change as of the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the certificate shall be automatically canceled as of that day.

§ 50-73.58:2. Involuntary cancellation of certificate of registration.

A. The certificate of registration to transact business in the Commonwealth of any foreign limited partnership may be canceled involuntarily by order of the Commission when it finds that the foreign limited partnership:

1. Has continued to exceed or abuse the authority conferred on it by law;
2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;
3. Has failed to file any document required by this chapter to be filed with the Commission; or
4. No longer exists under the laws of the state or other jurisdiction of its formation.

B. Before entering any such order, the Commission shall issue a rule against the limited partnership giving it an opportunity to be heard and show cause why such an order should not be entered. The commission may issue the rule on its own motion or on motion of the Attorney General.

C. The authority of a foreign limited partnership to transact business in the Commonwealth ceases on the date shown on the order canceling its certificate of registration.

D. The Commission's cancellation of a foreign limited partnership's certificate of registration appoints the clerk of the Commission the limited partnership's agent for service of process in any proceeding based on a cause of action arising during the time the limited partnership was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign limited partnership and shall be made on the clerk in accordance with § 12.1-19.1.

E. Cancellation of a foreign limited partnership's certificate of registration does not terminate the authority of the registered agent of the foreign limited partnership.

§ 50-73.58:3. Reinstatement of a certificate of registration that has been canceled.

A. A foreign limited partnership whose certificate of registration to transact business in the Commonwealth has been canceled may apply to the Commission for reinstatement within five years thereafter unless the cancellation was by order of the Commission entered pursuant to subdivision A 1 of § 50-73.58:2.

B. To have its certificate of registration reinstated, a foreign limited partnership shall provide the Commission with the following:

1. An application for reinstatement signed by a general partner of the foreign limited partnership, or, if there are no general partners, a limited partner, which may be in the form of a letter;

2. A reinstatement fee of \$100;

3. All annual registration fees required by § 50-73.67 and penalties that were due before the certificate of registration was canceled and that would have been assessed or imposed to the date of reinstatement if the limited partnership's certificate of registration had not been canceled;

4. A duly authenticated copy of any amendments or corrections made to the certificate of limited partnership or other constituent document of the foreign limited partnership and any mergers entered into by the foreign limited partnership from the date of cancellation of its certificate of registration to the date of its application for reinstatement, with an amended application for registration if required for an amendment or a correction, and all fees required by this chapter for the filing of such instruments;

5. If the name of the foreign limited partnership does not comply with the provisions of § 50-73.56 at the time of reinstatement, an amended application for registration to adopt a designated name for use in the Commonwealth that satisfies the requirements of § 50-73.56, with the fee required by this chapter for the filing of an amended application for registration; and

6. If the foreign limited partnership's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 50-73.5.

C. If the foreign limited partnership complies with the provisions of this section, the Commission shall enter an order of reinstatement, reinstating the foreign limited partnership's certificate of registration to transact business in the Commonwealth.

§ 50-73.69. Penalty for failure to timely pay annual registration fee.

A. Any domestic or any foreign limited partnership ~~failing~~ that fails to pay the annual registration fee into the state treasury within the time prescribed in § 50-73.67 shall incur a penalty ~~thereon~~ of \$25, which shall be added to the amount of the annual registration fee due. The penalty prescribed herein shall be in addition to any other ~~penalties and liabilities~~ penalty or liability imposed by law.

428 B. 1. If any domestic or foreign limited partnership fails to pay on or before October 1 of the year
429 assessed the annual registration fee, the *The* Commission shall mail to each domestic and foreign limited
430 partnership that fails to pay the annual registration fee within the time prescribed in § 50-73.67 notice
431 to the limited partnership of assessment of the penalty imposed herein and of the impending cancellation
432 of its certificate of limited partnership existence or certificate of registration, as the case may be. The
433 certificate shall be automatically canceled if any annual registration fee is unpaid as of December 31 of
434 that year. A domestic limited partnership whose certificate has been canceled pursuant to this section is
435 dissolved upon cancellation and shall be wound up pursuant to Article 8 (§ 50-73.49 et seq.) of this
436 chapter.

437 2. If any domestic or foreign limited partnership whose registered agent has filed with the
438 Commission his statement of resignation pursuant to § 50-73.6 fails to file a statement of change
439 pursuant to § 50-73.5 within 31 days after the date on which the statement of resignation was filed, the
440 Commission shall mail notice to the limited partnership of impending cancellation of its certificate. If
441 the limited partnership fails to file the statement of change as of the last day of the second month
442 immediately following the month in which the impending cancellation notice was mailed, the certificate
443 shall be automatically canceled as of that day. A domestic limited partnership whose certificate has been
444 canceled pursuant to this section is dissolved upon cancellation and shall be wound up pursuant to
445 Article 8 (§ 50-73.49 et seq.) of this chapter.

446 3. If the certificate of a domestic limited partnership is canceled pursuant to subdivisions 1 or 2, its
447 properties and affairs shall pass automatically to its general partners as trustees in liquidation. The
448 trustees shall then proceed to (i) collect the assets of the limited partnership, (ii) sell, convey and
449 dispose of such of its properties as are not to be distributed in kind to its partners, (iii) pay, satisfy and
450 discharge its liabilities and obligations and (iv) do all other acts required to liquidate its business and
451 affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall
452 distribute the remainder of its assets, either in cash or in kind, among its partners according to their
453 respective rights and interests.

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

459 D. A domestic or foreign limited partnership whose certificate of limited partnership or certificate of
460 registration has been canceled pursuant to either subsection B of this section or § 50-73.13 or § 50-73.58
461 may be relieved of the cancellation, and its certificate of limited partnership or certificate of registration
462 shall be reinstated (i) by paying, not later than five years following the date of cancellation, the annual
463 registration fee required by § 50-73.67, together with any late fee imposed by subsection A of this
464 section; a reinstatement fee of \$100; and all registration fees and penalties that were due before the
465 certificate was canceled and would have become due had the certificate not been canceled; and (ii) by
466 filing a duly authenticated copy of any amendments made to the certificate of limited partnership by a
467 foreign limited partnership and any mergers entered into by a foreign limited partnership, from the date
468 of cancellation pursuant to subsection B of this section to the date of reinstatement. If the name of the
469 limited partnership is not available at the time of reinstatement, the limited partnership shall file an
470 amendment to its certificate of limited partnership or certificate of registration or adopt an assumed
471 name for use in the Commonwealth as a precondition to reinstatement.

472 E. If the domestic or foreign limited partnership complies with the provisions of, and pays the fees
473 required by, subsection D of this section, the Commission shall reinstate the certificate of limited
474 partnership or certificate of registration of the limited partnership. A domestic or foreign limited
475 partnership whose certificate of limited partnership or certificate of registration is reinstated within five
476 years after the date on which it was canceled pursuant to subsection B of this section or § 50-73.13 or
477 § 50-73.58 shall be deemed not to have had its certificate of limited partnership or certificate of
478 registration canceled. In that event, the reinstated domestic or foreign limited partnership resumes
479 carrying on its business as if neither cancellation nor dissolution had ever occurred, and any liability
480 incurred by that domestic or foreign limited partnership or a partner after the cancellation and before the
481 reinstatement is determined as if cancellation had never occurred.

482 § 50-73.77. Transition and savings provisions.

483 A. The repeal of Chapter 2 (§ 50-44 et seq.) of this title shall not impair the continued existence of a
484 limited partnership formed prior to January 1, 1987.

485 B. The provisions of this chapter requiring limited partnerships formed under the laws of this
486 Commonwealth (i) to file a certificate of limited partnership under § 50-73.11, (ii) to maintain a
487 specified office, registered office, and registered agent as required by § 50-73.4, (iii) to keep certain
488 partnership records at its specified office as required by § 50-73.8, and (iv) to adopt a name which
489 complies with the requirements of § 50-73.2, shall not apply to limited partnerships formed prior to

January 1, 1987, under the laws of this Commonwealth until the first to occur of (i) the voluntary filing of a certificate under subsection C of this section or (ii) such time as the limited partnership would have been required to file an amendment to its certificate pursuant to § 50-67 as it existed prior to its repeal.

C. At the time a limited partnership formed prior to January 1, 1987, under the laws of this Commonwealth voluntarily elects to file a certificate under this subsection or is required to file a certificate under this subsection pursuant to the provisions of subsection B of this section, the limited partnership shall file an amended and restated certificate of limited partnership (i) in which it shall adopt a name meeting the requirements of § 50-73.2 and (ii) which shall contain the information required by § 50-73.11, the name under which its certificate of limited partnership, or any amendment thereto, was last filed under the Virginia Uniform Limited Partnership Act (§ 50-44 et seq.) as it existed prior to its repeal, and the counties or cities in which its certificate of limited partnership, or any amendments thereto, had last been filed in the clerk's office of such jurisdictions pursuant to the provisions of the Virginia Uniform Limited Partnership Act as it existed prior to its repeal. Within 30 days of such filing with the Commission, the limited partnership shall forward a copy of the amended and restated certificate of limited partnership, certified by the clerk of the Commission, to the clerk's office or offices shown in the amended and restated certificate as being the clerk's office or offices in which its certificate of limited partnership, or any amendment thereto, had last been filed pursuant to the provisions of the Virginia Uniform Limited Partnership Act as it existed prior to its repeal, with the appropriate fee required for each such filing.

D. The failure to file an amended and restated certificate in compliance with subsection C of this section shall not impair the continued existence of a limited partnership formed prior to January 1, 1987, or the rights and liabilities of the parties in such a limited partnership set forth in § 50-66 as it existed prior to repeal, but the general partners of such a limited partnership shall be liable for any false statements in the limited partnership's certificate of limited partnership as provided in § 50-73.18.

E. The provisions of § 50-73.7 permitting service of process on a limited partnership's registered agent or the Clerk of the Commission shall not apply to a limited partnership formed under the laws of this Commonwealth prior to January 1, 1987, until such time as the limited partnership files an amended and restated certificate of limited partnership pursuant to subsection C of this section.

F. At the time a limited partnership formed before January 1, 1987, that has not previously filed a certificate of limited partnership under § 50-73.11, would have been required to cancel its certificate pursuant to § 50-67 as it existed before its repeal, the limited partnership shall file with the Commission an amended and restated certificate of limited partnership as described in subsection C of this section and a certificate of cancellation as described in § ~~50-73.43~~ 50-73.52:4.

2. That § 50-73.13 of the Code of Virginia is repealed.

3. That the provisions of this act shall become effective on April 1, 2009.