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SENATE BILL NO. 782

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 29, 2008)

(Patron Prior to Substitute—Senator Obenshain)

A *BILL to amend and reenact §§ 13.1-753, 13.1-769, 13.1-915, 13.1-931, 13.1-1046, 13.1-1056, 13.1-1234, 13.1-1246, 50-73.49, and 50-73.58 of the Code of Virginia, relating to business entities; employment of illegal aliens.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-753, 13.1-769, 13.1-915, 13.1-931, 13.1-1046, 13.1-1056, 13.1-1234, 13.1-1246, 50-73.49, and 50-73.58 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-753. Involuntary termination of corporate existence.

A. The corporate existence of a corporation may be terminated involuntarily by order of the Commission when it finds that the corporation (i) has continued to exceed or abuse the authority conferred upon it by law; (ii) has failed to maintain a registered office or a registered agent in this Commonwealth as required by law; ~~or~~ (iii) has failed to file any document required by this chapter to be filed with the Commission; *or (iv) has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.* Upon termination, the properties and affairs of the corporation shall pass automatically to its directors as trustees in liquidation. The trustees then shall proceed to collect the assets of the corporation; sell, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders; pay, satisfy and discharge its liabilities and obligations; and do all other acts required to liquidate its business and affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests. *A corporation whose existence is terminated pursuant to clause (iv) shall not be eligible for reinstatement for a period of not less than one year.*

B. *Any corporation convicted of the offense listed in clause (iv) of subsection A shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.*

BC. Before entering any such order the Commission shall issue a rule against the corporation 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.

§ 13.1-769. Revocation of certificate of authority by Commission.

A. The certificate of authority to do business in the Commonwealth of any foreign corporation may be revoked by order of the Commission when it finds that the corporation:

1. Has continued to exceed the authority conferred upon 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 country of its incorporation; *or*

5. *Has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.*

A certificate revoked pursuant to subdivision A 5 shall not be eligible for reentry for a period of not less than one year.

B. *Any foreign corporation convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.*

BC. Before entering any such order the Commission shall issue a rule against the corporation 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.

CD. The authority of a foreign corporation to transact business in the Commonwealth ceases on the date shown on the order revoking its certificate of authority.

DE. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk of the Commission the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation 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 corporation and shall be made on the clerk in accordance with § 12.1-19.1.

EF. Revocation of a foreign corporation's certificate of authority does not terminate the authority of

60 the registered agent of the corporation.

61 § 13.1-915. Involuntary termination of corporate existence.

62 A. The corporate existence of a corporation may be terminated involuntarily by order of the
63 Commission when it finds that the corporation (i) has continued to exceed or abuse the authority
64 conferred upon it by law; (ii) has failed to maintain a registered office or a registered agent in the
65 Commonwealth as required by law; ~~or~~ (iii) has failed to file any document required by this Act to be
66 filed with the Commission; *or (iv) has been convicted for a violation of 8 U.S.C. § 1324a(f), as*
67 *amended, for actions of its officers and directors constituting a pattern or practice of employing*
68 *unauthorized aliens in the Commonwealth.* Upon termination, the properties and affairs of the
69 corporation shall pass automatically to its directors as trustees in liquidation. The trustees then shall
70 proceed to collect the assets of the corporation, and pay, satisfy and discharge its liabilities and
71 obligations and do all other acts required to liquidate its business and affairs. After paying or adequately
72 providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in
73 accordance with § 13.1-907. *A corporation whose existence is terminated pursuant to clause (iv) shall*
74 *not be eligible for reinstatement for a period of not less than one year.*

75 B. *Any corporation convicted of the offense listed in clause (iv) of subsection A shall immediately*
76 *report such conviction to the Commission and file with the Commission an authenticated copy of the*
77 *judgment or record of conviction.*

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

81 § 13.1-931. Revocation of certificate of authority by Commission.

82 A. The certificate of authority to transact business in the Commonwealth of any foreign corporation
83 may be revoked by order of the Commission when it finds that the corporation:

84 1. Has continued to exceed the authority conferred upon it by law;

85 2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required
86 by law;

87 3. Has failed to file any document required by this Act to be filed with the Commission; ~~or~~

88 4. No longer exists under the laws of the state or country of its incorporation; *or*

89 5. *Has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers*
90 *and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.*

91 A certificate revoked pursuant to subdivision A 5 shall not be eligible for reentry for a period of not
92 less than one year.

93 B. *Any foreign corporation convicted of the offense listed in subdivision A 5 shall immediately report*
94 *such conviction to the Commission and file with the Commission an authenticated copy of the judgment*
95 *or record of conviction.*

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

99 CD. The authority of a foreign corporation to transact business in the Commonwealth ceases on the
100 date shown on the order revoking its certificate of authority.

101 DE. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk
102 of the Commission the foreign corporation's agent for service of process in any proceeding based on a
103 cause of action arising during the time the foreign corporation was authorized to transact business in the
104 Commonwealth. Service of process on the clerk of the Commission under this subsection is service on
105 the foreign corporation and shall be made on the clerk in accordance with § 12.1-19.1.

106 EF. Revocation of a foreign corporation's certificate of authority does not terminate the authority of
107 the registered agent of the corporation.

108 § 13.1-1046. Dissolution; generally.

109 A. A limited liability company organized under this chapter is dissolved and its affairs shall be
110 wound up upon the happening of the first to occur of the following events:

111 1. At the time or on the happening of any events specified in writing in the articles of organization
112 or an operating agreement;

113 2. Upon the unanimous written consent of the members;

114 3. The entry of a decree of judicial dissolution under § 13.1-1047; or

115 4. Automatic cancellation of its certificate pursuant to § 13.1-1064.

116 B. *The certificate of organization of a limited liability company may be canceled involuntarily by*
117 *order of the Commission upon the limited liability company's conviction for a violation of 8 U.S.C.*
118 *§ 1324a(f), as amended, for actions of its members or managers constituting a pattern or practice of*
119 *employing unauthorized aliens in the Commonwealth. A certificate canceled pursuant to this subsection*
120 *shall not be eligible for reinstatement for a period of not less than one year.*

121 C. Before entering any such order the Commission shall issue a rule against the limited liability

company giving it an opportunity to be heard and show cause why such an order shall not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

D. Any limited liability company convicted of the offense listed in subsection B shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

§ 13.1-1056. Cancellation of certificate of registration.

A. A foreign limited liability company may cancel its certificate of registration by delivering to the Commission a certificate of cancellation on forms prescribed and furnished by the Commission which shall set forth:

1. The name of the foreign limited liability company and the name of the state or other jurisdiction under whose jurisdiction it was formed;

2. That the foreign limited liability company is not transacting business in this Commonwealth and that it surrenders its registration to transact business in this Commonwealth;

3. That the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this Commonwealth;

4. A mailing address to which the clerk may mail a copy of any process served on him under subdivision 3 of this subsection; and

5. A commitment to notify the clerk of the Commission in the future of any change in the mailing address on the limited liability company.

B. If the Commission finds that the certificate of cancellation conforms to the provisions of this article and all required fees have been paid, the Commission shall file the certificate and the certificate of registration shall be cancelled.

C. The certificate of registration to transact business in the Commonwealth of any foreign limited liability company may be canceled by order of the Commission upon the foreign limited liability company's conviction for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its members or managers constituting a pattern or practice of employing unauthorized aliens in the Commonwealth. A certificate canceled pursuant to this subsection shall not be eligible for reinstatement for a period of not less than one year.

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

E. Any foreign limited liability company convicted of the offense listed in subsection C shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

§ 13.1-1234. Dissolution generally.

A. A business trust organized under this chapter 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 on the happening of any events specified in writing in the articles of trust or a governing instrument;

2. Upon the unanimous written consent of the beneficial owners;

3. The entry of a decree of judicial dissolution under § 13.1-1235; or

4. Automatic cancellation of its certificate pursuant to § 13.1-1254.

B. The certificate of trust of a business trust may be canceled involuntarily by order of the Commission upon the business trust's conviction for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its trustees or beneficial owners authorized to act on the behalf of a business trust constituting a pattern or practice of employing unauthorized aliens in the Commonwealth. A certificate of a business trust canceled pursuant to this subsection shall not be eligible for reinstatement for a period of not less than one year.

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

D. Any business trust convicted of the offense listed in subsection B shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

§ 13.1-1246. Cancellation of certificate of registration.

A. A foreign business trust may cancel its certificate of registration by delivering to the Commission articles of cancellation on forms prescribed and furnished by the Commission that shall set forth:

1. The name of the foreign business trust and the name of the state or other jurisdiction under whose jurisdiction it was formed;

183 2. That the foreign business trust is not transacting business in this Commonwealth and that it
184 surrenders its registration to transact business in this Commonwealth;

185 3. That the foreign business trust revokes the authority of its registered agent to accept service on its
186 behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding
187 based on a cause of action arising during the time it was authorized to transact business in this
188 Commonwealth;

189 4. A mailing address to which the clerk may mail a copy of any process served on him under
190 subdivision 3 of this subsection; and

191 5. A commitment to notify the clerk of the Commission in the future of any change in the mailing
192 address of the business trust.

193 B. If the Commission finds that the articles of cancellation conform to the provisions of this article
194 and all required fees have been paid, it shall file the articles and the certificate of registration shall be
195 canceled.

196 C. *The certificate of registration to transact business in the Commonwealth of any foreign business*
197 *trust may be canceled by order of the Commission upon the foreign business trust's conviction for a*
198 *violation of 8 U.S.C. § 1324a(f), as amended, for actions of its trustees or beneficial owners authorized*
199 *to act on the behalf of a foreign business trust constituting a pattern or practice of employing*
200 *unauthorized aliens in the Commonwealth. A certificate of a foreign business trust canceled pursuant to*
201 *this subsection shall not be eligible for reinstatement for a period of not less than one year.*

202 D. *Before entering any such order the Commission shall issue a rule against the foreign business*
203 *trust giving it an opportunity to be heard and show cause why such an order shall not be entered. The*
204 *Commission may issue the rule on its own motion or on motion of the Attorney General.*

205 E. *Any foreign business trust convicted of the offense listed in subsection C shall immediately report*
206 *such conviction to the Commission and file with the Commission an authenticated copy of the judgment*
207 *or record of conviction.*

208 § 50-73.49. Dissolution generally.

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

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

214 2. Upon the unanimous written consent of the partners;

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

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

223 5. Automatic cancellation of the certificate of limited partnership pursuant to § 50-73.69.

224 B. *The certificate of limited partnership of a limited partnership may be canceled involuntarily by*
225 *order of the Commission upon the limited partnership's conviction for a violation of 8 U.S.C. § 1324a(f),*
226 *as amended, for actions of its partners constituting a pattern or practice of employing unauthorized*
227 *aliens in the Commonwealth. A certificate of a limited partnership canceled pursuant to this subsection*
228 *shall not be eligible for reinstatement for a period of not less than one year.*

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

232 D. *Any limited partnership convicted of the offense listed in subsection B shall immediately report*
233 *such conviction to the Commission and file with the Commission an authenticated copy of the judgment*
234 *or record of conviction.*

235 § 50-73.58. Cancellation of certificate of registration.

236 A. A foreign limited partnership may cancel its certificate of registration by delivering to the
237 Commission a certificate of cancellation executed by a general partner on forms prescribed and
238 furnished by the Commission which shall set forth:

239 1. The name of the foreign limited partnership and the name of the state or other jurisdiction under
240 whose jurisdiction it was formed;

241 2. That the foreign limited partnership is not transacting business in this Commonwealth and that it
242 surrenders its registration to transact business in this Commonwealth;

243 3. That the foreign limited partnership revokes the authority of its registered agent to accept service
244 on its behalf and appoints the Clerk of the Commission as its agent for service of process in any

245 proceeding based on a cause of action arising during the time it was authorized to transact business in
246 this Commonwealth;

247 4. A mailing address to which the Clerk may mail a copy of any process served on him under
248 subdivision 3 of this subsection; and

249 5. A commitment to notify the Clerk of the Commission in the future of any change in the mailing
250 address of the limited partnership.

251 B. If the certificate has been signed by a general partner of the limited partnership and the required
252 fees have been paid, the Commission shall file the certificate and the certificate of registration shall be
253 canceled.

254 C. *The certificate of registration to transact business in the Commonwealth of any foreign limited*
255 *partnership may be canceled involuntarily by order of the Commission upon the foreign limited*
256 *partnership's conviction for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its partners*
257 *constituting a pattern or practice of employing unauthorized aliens in the Commonwealth. A certificate*
258 *of a foreign limited partnership canceled pursuant to this subsection shall not be eligible for*
259 *reinstatement for a period of not less than one year.*

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

263 E. *Any foreign limited partnership convicted of the offense listed in subsection C shall immediately*
264 *report such conviction to the Commission and file with the Commission an authenticated copy of the*
265 *judgment or record of conviction.*