

090076864

HOUSE BILL NO. 2126

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact §§ 13.1-1046 as it shall become effective, 13.1-1050.3 as it shall become effective, 13.1-1056, 13.1-1056.2 as it shall become effective, 13.1-1234 as it shall become effective, 13.1-1238.2 as it shall become effective, 13.1-1246, 13.1-1246.2 as it shall become effective, 50-73.49 as it shall become effective, 50-73.52:6 as it shall become effective, 50-73.58, and 50-73.58:2 as it shall become effective, of the Code of Virginia, relating to business entities convicted of employing unauthorized aliens in the Commonwealth.

Patrons—Byron, Athey, Merricks and Pollard

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1046 as it shall become effective, 13.1-1050.3 as it shall become effective, 13.1-1056, 13.1-1056.2 as it shall become effective, 13.1-1234 as it shall become effective, 13.1-1238.2 as it shall become effective, 13.1-1246, 13.1-1246.2 as it shall become effective, 50-73.49 as it shall become effective, 50-73.52:6 as it shall become effective, 50-73.58, and 50-73.58:2 as it shall become effective of the Code of Virginia are amended and reenacted as follows:

§ 13.1-1046. (Effective April 1, 2009) Dissolution; generally.

~~A.~~ A limited liability company 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 organization or an operating agreement;

2. Upon the unanimous written consent of the members;

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

4. Automatic cancellation of its existence pursuant to § 13.1-1050.2; or

5. Involuntary cancellation of its existence pursuant to § 13.1-1050.3.

~~B.~~ The certificate of organization of a limited liability company may be canceled involuntarily by order of the Commission upon the 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.

~~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.

§ 13.1-1050.3. (Effective April 1, 2009) Involuntary cancellation of limited liability company existence.

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

1. Continued to exceed or abuse the authority conferred upon 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; or

4. Been convicted 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.

B. 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 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 liability company whose existence has been canceled pursuant to this section shall pass automatically to its managers, or if the limited liability company is managed by its members, then to its members, or if the limited liability company has no managers or members, then to the holders of its interests, in each such case as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the limited liability company; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its members; (iii) pay, satisfy, and

INTRODUCED

HB2126

59 discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and
60 affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall
61 distribute the remainder of its assets, either in cash or in kind, among its members or interest holders
62 according to their respective rights and interests.

63 *D. Any limited liability company convicted of the offense listed in subdivision A 4 shall immediately*
64 *report such conviction to the Commission and file with the Commission an authenticated copy of the*
65 *judgment or record of conviction. A limited liability company whose existence is canceled pursuant to*
66 *subdivision A 4 shall not be eligible for reinstatement for a period of not less than one year.*

67 § 13.1-1056. Cancellation of certificate of registration.

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

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

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

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

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

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

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

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

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

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

98 § 13.1-1056.2. (Effective April 1, 2009) Involuntary cancellation of certificate of registration.

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

102 1. Has continued to exceed or abuse the authority conferred upon it by law;

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

105 3. Has failed to file any document required by this chapter to be filed with the Commission; or

106 4. No longer exists under the laws of the state or other jurisdiction of its organization; or

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

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

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

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

120 E. Cancellation of a foreign limited liability company's certificate of registration does not terminate

the authority of the registered agent of the foreign limited liability company.

F. Any foreign limited liability company 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. A certificate of registration canceled pursuant to subdivision A 5 shall not be eligible for reinstatement for a period of not less than one year.

§ 13.1-1234. (Effective April 1, 2009) 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;

4. Automatic cancellation of its existence pursuant to § 13.1-1238.1; or

5. Involuntary cancellation of its existence pursuant to § 13.1-1238.2.

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.

§ 13.1-1238.2. (Effective April 1, 2009) Involuntary cancellation of business trust existence.

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

1. Continued to exceed or abuse the authority conferred upon 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; or

4. *Been convicted 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.*

B. 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 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 business trust whose existence has been canceled pursuant to this section shall pass automatically to its trustees as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the business trust; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its beneficial owners; (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 liquidating trustees shall distribute the remainder of its assets, either in cash or in kind, among its beneficial owners according to their respective rights and interests.

D. *Any business trust convicted of the offense listed in subdivision A 4 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A business trust whose existence is canceled pursuant to subdivision A 4 shall not be eligible for reinstatement for a period of not less than one year.*

§ 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;

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

3. That the foreign business trust 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

182 Commonwealth;

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

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

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

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

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

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

202 § 13.1-1246.2. (Effective April 1, 2009) Involuntary cancellation of registration.

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

206 1. Has continued to exceed or abuse the authority conferred upon it by law;

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

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

210 4. No longer exists under the laws of the state or other jurisdiction of its formation; ~~or~~

211 5. *Has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its trustees*
212 *or beneficial owners authorized to act on the behalf of a foreign business trust constituting a pattern or*
213 *practice of employing unauthorized aliens in the Commonwealth.*

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

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

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

224 E. Cancellation of a foreign business trust's certificate of registration does not terminate the authority
225 of the registered agent of the foreign business trust.

226 F. *Any foreign business trust convicted of the offense listed in subdivision A 5 shall immediately*
227 *report such conviction to the Commission and file with the Commission an authenticated copy of the*
228 *judgment or record of conviction. A certificate of registration canceled pursuant to subdivision A 5 shall*
229 *not be eligible for reinstatement for a period of not less than one year.*

230 § 50-73.49. (Effective April 1, 2009) Dissolution generally.

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

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

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

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

4. Entry of a decree of judicial dissolution under § 50-73.50;
5. Automatic cancellation of its existence pursuant to § 50-73.52:5; or
6. Involuntary cancellation of its existence pursuant to § 50-73.52:6.

B. The certificate of limited partnership of a limited partnership may be canceled involuntarily by order of the Commission upon the limited partnership's conviction for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its partners constituting a pattern or practice of employing unauthorized aliens in the Commonwealth. A certificate of a limited partnership 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 limited partnership 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 partnership 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.

§ 50-73.52:6. (Effective April 1, 2009) 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; or

4. *Been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its partners constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.*

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.

D. *Any limited partnership convicted of the offense listed in subdivision A 4 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction. A limited partnership whose existence is canceled pursuant to subdivision A 4 shall not be eligible for reinstatement for a period of not less than one year.*

§ 50-73.58. Cancellation of certificate of registration.

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

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

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

3. That the foreign limited partnership 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 of the limited partnership.

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

C. The certificate of registration to transact business in the Commonwealth of any foreign limited partnership may be canceled involuntarily by order of the Commission upon the foreign limited partnership's conviction for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its partners constituting a pattern or practice of employing unauthorized aliens in the Commonwealth. A certificate

305 of a foreign limited partnership canceled pursuant to this subsection shall not be eligible for
306 reinstatement for a period of not less than one year.

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

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

313 § 50-73.58:2. (Effective April 1, 2009) Involuntary cancellation of certificate of registration.

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

317 1. Has continued to exceed or abuse the authority conferred on it by law;
318 2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required
319 by law;

320 3. Has failed to file any document required by this chapter to be filed with the Commission; or

321 4. No longer exists under the laws of the state or other jurisdiction of its formation; or

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

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

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

329 D. The Commission's cancellation of a foreign limited partnership's certificate of registration appoints
330 the clerk of the Commission the limited partnership's agent for service of process in any proceeding
331 based on a cause of action arising during the time the limited partnership was authorized to transact
332 business in the Commonwealth. Service of process on the clerk of the Commission under this subsection
333 is service on the foreign limited partnership and shall be made on the clerk in accordance with
334 § 12.1-19.1.

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

337 F. *Any foreign limited partnership convicted of the offense listed in subdivision A 5 shall immediately*
338 *report such conviction to the Commission and file with the Commission an authenticated copy of the*
339 *judgment or record of conviction. A certificate of registration canceled pursuant to subdivision A 5 shall*
340 *not be eligible for reinstatement for a period of not less than one year.*

341 **2. That an emergency exists and this act shall become effective on April 1, 2009.**