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HOUSE BILL NO. 1040

Offered January 13, 2010

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A BILL to amend and reenact §§ 13.1-1004, 13.1-1050.2, 13.1-1056.1, and 13.1-1062 of the Code of Virginia and to repeal § 13.1-1063 of the Code of Virginia, relating to limited liability companies; correction of documents; annual registration fees.

Patron—Byron

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1004, 13.1-1050.2, 13.1-1056.1, and 13.1-1062 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-1004. Issuance of certificate by Commission; recordation of documents.

A. Whenever this chapter conditions the effectiveness of a document upon the issuance of a certificate by the Commission to evidence the effectiveness of the document, the Commission shall by order issue the certificate if it finds that the document complies with the provisions of this chapter and that all required fees have been paid. The Commission shall admit any such certificate to record in its office.

B. The existence of a limited liability company shall begin at the time the Commission issues a certificate of organization unless a later date and time are specified as provided by subsection D of this section. The certificate of organization shall be conclusive evidence that all conditions precedent required to be performed by the person(s) forming the limited liability company have been complied with and that the limited liability company has been formed under this chapter.

C. Whenever the Commission is directed to admit any document to record in its office, it shall cause it to be spread upon its record books or to be recorded or reproduced in any other manner the Commission may deem suitable. Except as otherwise provided by law, the Commission may furnish information from and provide access to any of its records by any means the Commission may deem suitable.

D. 1. A certificate issued by the Commission is effective at the time such certificate is issued, unless the certificate relates to articles filed with the Commission and the articles state that the certificate shall become effective at a later time and date specified in the articles. 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 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, any certificate that has a delayed effective time and date shall not become effective if, prior to the effective time and date, the parties to the articles to which the certificate relates file a request for cancellation with the Commission, and the Commission, by order, cancels the certificate.

3. Notwithstanding subdivision 1 of this subsection, for purposes of §§ 13.1-1012 and 13.1-1054, any certificate that has a delayed effective date shall be deemed to be effective when the certificate is issued.

E. *Notwithstanding any other provision of law to the contrary, the Commission shall have the power to act upon a petition filed by a limited liability company at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person without authority to act for the limited liability company.*

§ 13.1-1050.2. Automatic cancellation of limited liability company existence.

A. ~~If Whether or not the notice described in subsection C of § 13.1-1062 is mailed, if any limited liability company fails to pay its annual registration fee on or before December 31 of the year assessed, its the last day of the third month immediately following its annual registration fee due date each year,~~ the existence of the limited liability company shall be automatically canceled as of that day.

B. If any limited liability company whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-1017 fails to file a statement of change pursuant to § 13.1-1016 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the limited liability company of the impending cancellation of its existence. If the limited liability company 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 liability company shall be automatically canceled as of that day.

C. The properties and affairs of a limited liability company whose existence has been canceled

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59 pursuant to this section shall pass automatically to its managers, or if the limited liability company is
60 managed by its members, then to its members, or if the limited liability company has no managers or
61 members, then to the holders of its interests, in each such case as trustees in liquidation. The trustees
62 shall then proceed to (i) collect the assets of the limited liability company; (ii) sell, convey, and dispose
63 of such of its properties as are not to be distributed in kind to its members; (iii) pay, satisfy, and
64 discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and
65 affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall
66 distribute the remainder of its assets, either in cash or in kind, among its members or interest holders
67 according to their respective rights and interests.

68 D. No member, manager or other agent of a limited liability company shall have any personal
69 obligation for any liabilities of the limited liability company, whether such liabilities arise in contract,
70 tort, or otherwise, solely by reason of the cancellation of the limited liability company's existence
71 pursuant to this section.

72 § 13.1-1056.1. Automatic cancellation of certificate of registration.

73 A. ~~If Whether or not the notice described in subsection C of § 13.1-1062 is mailed, if any foreign~~
74 ~~limited liability company fails to pay its annual registration fee on or before December 31 of the year~~
75 ~~assessed, its certificate of registration the last day of the third month immediately following its annual~~
76 ~~registration fee due date each year, such foreign limited liability company shall automatically cease to~~
77 ~~be authorized to transact business in the Commonwealth and its certificate of registration shall be~~
78 ~~automatically canceled as of that day.~~

79 B. If any foreign limited liability company whose registered agent has filed with the Commission a
80 statement of resignation pursuant to § 13.1-1017 fails to file a statement of change pursuant to
81 § 13.1-1016 within 31 days after the date on which the statement of resignation was filed, the
82 Commission shall mail notice to the foreign limited liability company of the impending cancellation of
83 its certificate of registration. If the *foreign* limited liability company fails to file the statement of change
84 *on or before* the last day of the second month immediately following the month in which the impending
85 cancellation notice was mailed, the *foreign* limited liability company shall automatically cease to be
86 authorized to transact business in the Commonwealth and its certificate of registration shall be
87 automatically canceled as of that day.

88 C. *The automatic cancellation of a foreign limited liability company's certificate of registration*
89 *constitutes the appointment of the clerk of the Commission as the foreign limited liability company's*
90 *agent for service of process in any proceeding based on a cause of action arising during the time the*
91 *foreign limited liability company was registered to transact business in the Commonwealth. Service of*
92 *process on the clerk of the Commission under this subsection is service on the foreign limited liability*
93 *company and shall be made on the clerk in accordance with § 12.1-19.1.*

94 D. *Revocation of a foreign limited liability company's certificate of registration does not terminate*
95 *the authority of the registered agent of the foreign limited liability company.*

96 § 13.1-1062. Assessment of annual registration fees; annual registration fees to be paid by domestic
97 and foreign limited liability companies.

98 A. ~~Every~~ Each year, the Commission shall assess against every domestic limited liability company,
99 and every foreign limited liability company registered to transact business in ~~this~~ the Commonwealth, an
100 annual registration fee of \$50, and each such limited liability company shall pay into the state treasury
101 on or before October 1 in each year after the calendar year in which it was formed or registered to
102 transact business in ~~this Commonwealth~~ an the annual registration fee of \$50 herein imposed, in
103 accordance with subsection B.

104 The annual registration fee shall be imposed irrespective of any specific license tax or other tax or
105 fee imposed by law upon the limited liability company for the privilege of carrying on its business in the
106 Commonwealth or upon its franchise, property or receipts.

107 B. The Commission shall enter an order establishing the schedule for assessment of limited liability
108 companies and payments due for such assessment. Such order shall provide either:

109 1. That each year the Commission shall ascertain from its records each domestic limited liability
110 company and each foreign limited liability company registered to transact business in the
111 Commonwealth, as of July 1 of each year, and shall assess against each such limited liability company
112 the annual registration fee imposed in subsection A, and, except as provided in subsection C, that each
113 such limited liability company shall pay the assessment due into the state treasury on or before
114 September 30 in each year after the calendar year in which it was formed or registered to transact
115 business in the Commonwealth; provided that the initial annual registration fee to be paid by a domestic
116 limited liability company created by conversion shall be due in the year after the calendar year in which
117 it converted; or

118 2. That each year the Commission shall ascertain from its records each domestic limited liability
119 company and each foreign limited liability company registered to transact business in the
120 Commonwealth as of the first day of the second month next preceding the month in which it was

121 organized or registered to transact business in the Commonwealth, and, except as provided in
122 subsection C, that the limited liability company shall pay the assessment due into the state treasury on
123 or before the last day of the twelfth month next succeeding the month in which it was organized or
124 registered to transact business in the Commonwealth, and by such date in each year thereafter;
125 provided that the initial annual registration fee to be paid by a domestic limited liability company
126 created by conversion shall be due in the year after the calendar year in which it converted.

127 C. At the discretion of the Commission, the annual registration fee due date for a limited liability
128 company may be extended, on a monthly basis for a period of not less than one month nor more than
129 11 months, at the request of its registered agent of record or as may be necessary to distribute annual
130 registration fee due dates of limited liability companies as equally as practicable throughout the year on
131 a monthly basis.

132 D. A statement of the assessment, when made, shall be forwarded by the clerk of the Commission to
133 the Comptroller and to each domestic and foreign limited liability company.

134 E. Registration fee assessments that have been paid shall not be refunded.

135 BF. The fees paid into the state treasury under this section and the fees collected under § 13.1-1005
136 shall be set aside and paid into the special fund created under § 13.1-775.1, and shall be used only by
137 the Commission as it deems necessary to defray the costs of the Commission and of the office of the
138 clerk of the Commission in supervising, implementing, administering and enforcing the provisions of
139 this chapter. The projected excess of fees collected over the costs of administration and enforcement so
140 incurred shall be paid into the general fund prior to the close of each fiscal year, based on the
141 unexpended balance of the special fund at the end of the prior fiscal year. An adjustment of this transfer
142 amount to reflect actual fees collected shall occur during the first quarter of the succeeding fiscal year.

143 2. That the State Corporation Commission shall enter an order in accordance with subsection B
144 of § 13.1-1062 of the Code of Virginia no later than August 1, 2010, and may modify such order at
145 any time.

146 3. That § 13.1-1063 of the Code of Virginia is repealed.