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## HOUSE BILL NO. 1040

House Amendments in [ ] - February 2, 2010

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 Prior to Engrossment—Delegate 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. ~~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 pursuant to this section shall pass automatically to its managers, or if the limited liability company is

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

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

71 § 13.1-1056.1. Automatic cancellation of certificate of registration.

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

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

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

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

95 § 13.1-1062. Assessment of annual registration fees; annual registration fees to be paid by domestic  
96 and foreign limited liability companies.

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

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

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

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

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

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

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

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

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

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

2. That the State Corporation Commission shall enter an order in accordance with subsection B of § 13.1-1062 of the Code of Virginia no later than August 1, 2010 [ , and may modify such order at any time. Such order may provide for pro-ration of an assessment or extend, or both, the annual registration assessment date, due date, and automatic cancellation date for any limited liability company as the Commission deems necessary. The Commission may enter an order at any time to modify an existing order entered pursuant to subsection B of § 13.1-1062 of the Code of Virginia ] .

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

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