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HOUSE BILL NO. 1105

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 13.1-635, 13.1-636, 13.1-764, 13.1-765, 13.1-834, 13.1-835, 13.1-926, 13.1-927, 13.1-1016, 13.1-1017, 13.1-1221, 13.1-1222, 50-73.6, and 50-73.135 of the Code of Virginia, relating to business entities; registered office and registered agent.

Patron—Joannou

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-635, 13.1-636, 13.1-764, 13.1-765, 13.1-834, 13.1-835, 13.1-926, 13.1-927, 13.1-1016, 13.1-1017, 13.1-1221, 13.1-1222, 50-73.6, and 50-73.135 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-635. Change of registered office or registered agent.

A. A corporation may change its registered office or registered agent, or both, upon filing ~~in the~~ office ~~of~~ with the Commission a statement of change on a form ~~supplied~~ prescribed and furnished by the Commission that sets forth:

1. The name of the corporation;

2. The address of its current registered office;

3. If the current registered office is to be changed, the post office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;

4. The name of its current registered agent;

5. If the current registered agent is to be changed, the name of the new registered agent; and

6. That after the change or changes are made, the corporation will be in compliance with the requirements of § 13.1-634.

B. A statement of change shall forthwith be filed ~~in the office of~~ with the Commission by a corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-634.

C. ~~If A corporation's registered agent may sign a statement as required above if~~ (i) the business address of ~~a the~~ registered agent changes to another ~~place~~ post office address within ~~this the~~ Commonwealth, or (ii) the name of ~~a the~~ registered agent ~~changes, or~~ ~~(iii) a~~ has been legally changed. ~~A corporation's new registered agent may sign and submit for filing a statement as required above if~~ (a) the former registered agent ~~merges~~ is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § 13.1-634. ~~In either instance, the registered agent or surviving entity shall forthwith file a statement as required above except that it need be signed, either manually or in facsimile, only by the registered agent or the surviving entity and must, which shall recite that a copy of the statement has been shall be mailed to the principal office address of the corporation on whose behalf it is to be or before the business day following the day on which the statement is filed.~~

§ 13.1-636. Resignation of registered agent.

A. A registered agent may resign the agency appointment by signing and filing with the Commission ~~his a~~ statement of resignation accompanied by a certification that the registered agent ~~has mailed shall mail~~ a copy thereof to the principal office of the corporation by certified mail ~~on or before the business day following the day on which the statement is filed.~~ The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

§ 13.1-764. Change of registered office or registered agent of a foreign corporation.

A. A foreign corporation authorized to transact business in ~~this the~~ Commonwealth may change its registered office or registered agent ~~by, or both, upon~~ filing with the Commission a statement of change ~~on a form prescribed and furnished by the Commission~~ that sets forth:

1. The name of the foreign corporation;

2. The address of its current registered office;

3. If the current registered office is to be changed, the ~~post office~~ address of the new registered office, including both ~~(i) the post-office address with~~ street and number, if any, of the new registered

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59 office, and ~~(ii)~~ the name of the ~~county or city or county~~ in which it is to be located;
60 4. The name of its current registered agent;
61 5. If the current registered agent is to be changed, the name of the new registered agent; and
62 6. That after the change or changes are made, the corporation will be in compliance with the
63 requirements of § 13.1-763.

64 B. ~~1.~~ A new statement of change shall forthwith be filed with the Commission by ~~the~~ a foreign
65 corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of
66 § 13.1-763.

67 ~~2.~~ *If C. A foreign corporation's registered agent may sign a statement as required above if (i) the*
68 *business address of a the registered agent changes to another place post office address within this the*
69 *Commonwealth; or (ii) the name of a the registered agent changes; or (iii) a has been legally changed.*
70 *A foreign corporation's new registered agent may sign and submit for filing a statement as required*
71 *above if (a) the former registered agent merges is a business entity that has been merged into the new*
72 *registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission,*
73 *and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to*
74 *§ 13.1-763. In either instance, the registered agent or surviving entity shall forthwith file a statement as*
75 *required above except that it need be signed only by the registered agent or the surviving entity and*
76 *must, which shall recite that a copy of the statement has been shall be mailed to the principal office of*
77 *the foreign corporation on whose behalf it is to be or before the business day following the day on*
78 *which the statement is filed.*

79 § 13.1-765. Resignation of registered agent of foreign corporation.

80 A. The registered agent of a foreign corporation may resign the agency appointment by signing and
81 filing with the Commission a statement of resignation accompanied by a certification that the registered
82 agent ~~has mailed~~ shall mail a copy thereof to the principal office of the corporation by certified mail on
83 or before the business day following the day on which the statement is filed. The statement of
84 resignation may include a statement that the registered office is also discontinued.

85 B. The agency appointment is terminated, and the registered office discontinued if so provided, on
86 the thirty-first day after the date on which the statement was filed.

87 § 13.1-834. Change of registered office or registered agent.

88 A. A corporation may change its registered office or registered agent, or both, upon filing in the
89 office of with the Commission a statement of change on a form ~~supplied~~ prescribed and furnished by
90 the Commission that sets forth:

- 91 1. The name of the corporation;
- 92 2. The address of its current registered office;
- 93 3. If the current registered office is to be changed, the post-office address, including the street and
94 number, if any, of the new registered office, and the name of the ~~county or city or county~~ in which it is
95 to be located;
- 96 4. The name of its current registered agent;
- 97 5. If the current registered agent is to be changed, the name of the new registered agent; and
- 98 6. That after the change or changes are made, the corporation will be in compliance with the
99 requirements of § 13.1-833.

100 B. A statement of change shall forthwith be filed in the office of with the Commission by a
101 corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of
102 § 13.1-833.

103 C. *If A corporation's registered agent may sign a statement as required above if (i) the business*
104 *address of a the registered agent changes to another place post office address within the Commonwealth;*
105 *or (ii) the name of a the registered agent changes; or (iii) a has been legally changed. A corporation's*
106 *new registered agent may sign and submit for filing a statement as required above if (a) the former*
107 *registered agent merges is a business entity that has been merged into the new registered agent, (b) the*
108 *instrument of merger is on record in the office of the clerk of the Commission, and (c) the new*
109 *registered agent is an entity that is qualified to serve as a registered agent pursuant to § 13.1-833. In*
110 *either instance, the registered agent or surviving entity shall forthwith file a statement as required above*
111 *except that it need be signed; either manually or in facsimile; only by the registered agent or the*
112 *surviving entity, reciting, which shall recite that a copy of the statement has been shall be mailed to the*
113 *principal office address of the corporation on whose behalf it is to be or before the business day*
114 *following the day on which the statement is filed.*

115 § 13.1-835. Resignation of registered agent.

116 A. A registered agent may resign his the agency appointment by signing and filing with the
117 Commission his a statement of resignation accompanied by a certification that he has mailed the
118 registered agent shall mail a copy thereof to the principal office of the corporation by certified mail on
119 or before the business day following the day on which the statement is filed. The statement of
120 resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

§ 13.1-926. Change of registered office or registered agent of a foreign corporation.

A. A foreign corporation authorized to transact business in the Commonwealth may change its registered office or registered agent ~~by, or both, upon~~ filing with the Commission a statement of change *on a form prescribed and furnished by the Commission* that sets forth:

1. The name of the foreign corporation;
2. The address of its current registered office;
3. If the current registered office is to be changed, the *post office* address ~~of the new registered office, including both (i) the post-office address with street and number, if any, of the new registered office, and (ii) the name of the city or county in which it is to be located;~~
4. The name of its current registered agent;
5. If the current registered agent is to be changed, the name of the new registered agent; and
6. That after the change or changes are made, the corporation will be in compliance with the requirements of § 13.1-925.

B. A ~~new~~ statement of change shall forthwith be filed *with the Commission* by ~~the~~ a foreign corporation whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-925.

C. ~~If A foreign corporation's registered agent may sign a statement as required above if~~ (i) the business address of ~~a the~~ registered agent changes to another ~~place~~ *post office* address within the Commonwealth; ~~or (ii) the name of a the registered agent changes, or (iii) a has been legally changed.~~ A foreign corporation's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent ~~merges~~ is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to § 13.1-925. *In either instance, the registered agent or surviving entity shall forthwith file a statement as required above except that it need be signed only by the registered agent or the surviving entity and, which shall contain a statement recite that a copy of the statement has been mailed to the principal office address of the foreign corporation on whose behalf it is to be or before the business day following the day on which the statement is filed.*

§ 13.1-927. Resignation of registered agent of foreign corporation.

A. The registered agent of a foreign corporation may resign ~~his the~~ agency appointment by signing and filing with the Commission ~~his a~~ statement of resignation accompanied by a certification that ~~he has mailed the registered agent shall mail~~ a copy thereof to the principal office of the corporation by certified mail *on or before the business day following the day on which the statement is filed.* The statement of resignation may include a statement that the registered office is also discontinued.

B. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

§ 13.1-1016. Change of registered office or registered agent.

A. A limited liability company or a foreign limited liability company registered ~~pursuant to Article 10 (§ 13.1-1051 et seq.) of this chapter~~ to transact business in the Commonwealth may change its registered office or registered agent, or both, upon filing ~~in the office of~~ with the Commission a statement of change on a form ~~supplied~~ *prescribed and furnished* by the Commission that sets forth:

1. The name of the limited liability company or foreign limited liability company;
2. The address of its current registered office;
3. If the current registered office is to be changed, the post-office address, including the street and number, if any, of the new registered office, and the name of the city or county in which it is to be located;
4. The name of its current registered agent;
5. If the current registered agent is to be changed, the name of the new registered agent; and
6. That after the change or changes are made, the ~~limited liability company~~ *domestic* or foreign limited liability company will be in compliance with the requirements of § 13.1-1015.

B. A statement of change shall forthwith be filed ~~in the office of~~ with the Commission by a ~~limited liability company~~ *domestic* or a foreign limited liability company registered ~~pursuant to Article 10 (§ 13.1-1051 et seq.) of this chapter~~ whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-1015.

C. ~~If A domestic or foreign limited liability company's registered agent may sign a statement as required above if~~ (i) the business address of ~~a the~~ registered agent changes to another ~~place~~ *post office* address within ~~this the~~ Commonwealth; ~~or (ii) the name of a the registered agent changes, or (iii) a has been legally changed.~~ A domestic or foreign limited liability company's new registered agent may sign and submit for filing a statement as required above if (a) the former registered agent ~~merges~~ is a

182 *business entity that has been merged into the new registered agent, (b) the instrument of merger is on*
183 *record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is*
184 *qualified to serve as a registered agent pursuant to § 13.1-1015. In either instance, the registered agent*
185 *or surviving entity shall forthwith file a statement as required above except that it need be signed, either*
186 *manually or in facsimile, only by the registered agent or the surviving entity and must, which shall*
187 *recite that a copy of the statement has been shall be mailed to the principal office address of the*
188 *domestic or foreign limited liability company on whose behalf it is to be or before the business day*
189 *following the day on which the statement is filed.*

190 § 13.1-1017. Resignation of registered agent.

191 A. A *The registered agent of a domestic or foreign limited liability company may resign his the*
192 *agency appointment by signing and filing with the Commission a statement of resignation accompanied*
193 *by his a certification that he has mailed the registered agent shall mail a copy thereof by certified mail*
194 *to the principal office of the limited liability company domestic or foreign limited liability company by*
195 *certified mail on or before the business day following the day on which the statement is filed. The*
196 *statement of resignation may also include a statement that the registered office is also discontinued.*

197 B. The agency appointment is terminated, and the registered office discontinued if so provided, on
198 the thirty-first day after the date on which the statement was filed.

199 § 13.1-1221. Change of registered office or registered agent.

200 A. A business trust or a foreign business trust registered pursuant to Article 9 (~~§ 13.1-1241 et seq.~~)
201 *of this chapter to transact business in the Commonwealth may change its registered office or registered*
202 *agent, or both, upon filing in the office of with the Commission a statement of change on a form*
203 *supplied prescribed and furnished by the Commission that sets forth:*

204 1. The name of the business trust or foreign business trust;

205 2. The address of its current registered office;

206 3. If the current registered office is to be changed, the post office address, including the street and
207 number, if any, of the new registered office, and the name of the city or county in which it is to be
208 located;

209 4. The name of its current registered agent;

210 5. If the current registered agent is to be changed, the name of the new registered agent; and

211 6. That after the change or changes are made, the ~~business trust~~ domestic or foreign business trust
212 will be in compliance with the requirements of § 13.1-1220.

213 B. A statement of change shall forthwith be filed in the office of with the Commission by a ~~business~~
214 ~~trust~~ domestic or a foreign business trust registered pursuant to Article 9 (~~§ 13.1-1241 et seq.~~) of this
215 ~~chapter~~ whenever its registered agent dies, resigns or ceases to satisfy the requirements of § 13.1-1220.

216 C. ~~If A domestic or foreign business trust's registered agent may sign a statement as required above~~
217 ~~if (i) the business address of a the registered agent changes to another place post office address within~~
218 ~~this the Commonwealth, or (ii) the name of a registered agent changes, or (iii) a has been legally~~
219 ~~changed. A domestic or foreign business trust's new registered agent may sign and submit for filing a~~
220 ~~statement as required above if (a) the former registered agent merges is a business entity that has been~~
221 ~~merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk~~
222 ~~of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered~~
223 ~~agent pursuant to § 13.1-1220. In either instance, the registered agent or surviving entity shall forthwith~~
224 ~~file a statement as required above except that it need be signed, either manually or in facsimile, only by~~
225 ~~the registered agent or the surviving entity and, which shall recite that a copy of the statement has been~~
226 ~~shall be mailed to the principal office address of the domestic or foreign business trust on whose behalf~~
227 ~~it is to be or before the business day following the day on which the statement is filed.~~

228 § 13.1-1222. Resignation of registered agent.

229 A. A registered agent may resign his the agency appointment by signing and filing with the
230 Commission a statement of resignation accompanied by his a certification that he has mailed the
231 *registered agent shall mail a copy thereof by certified mail to the principal office of the business trust*
232 *domestic or foreign business trust on or before the business day following the day on which the*
233 *statement is filed. The statement of resignation may also include a statement that the registered office is*
234 *also discontinued.*

235 B. The agency appointment is terminated, and the registered office discontinued if so provided, on
236 the thirty-first day after the date on which the statement was filed.

237 § 50-73.6. Resignation of registered agent.

238 A. A registered agent may resign his the agency appointment by signing and filing with the
239 Commission a statement of resignation accompanied by his a certification that he has mailed the
240 *registered agent shall mail a copy thereof by certified mail to the business address of any general*
241 *partner set forth in the limited partnership's certificate of principal office of the domestic or foreign*
242 *limited partnership by certified mail on or before the business day following the day on which the*
243 *statement is filed. The statement of resignation may include a statement that the registered office is also*

discontinued.

B. The agency appointment is terminated, *and the registered office discontinued if so provided*, on the thirty-first day after the date on which the statement was filed.

§ 50-73.135. Registered office and registered agent.

A. Each registered limited liability partnership and each foreign registered limited liability partnership registered pursuant to this article shall continuously maintain in this Commonwealth:

1. A registered office that may be the same as any of its places of business; and

2. A registered agent who shall be either:

a. An individual who is a resident of this Commonwealth and is either (i) a general partner of the registered limited liability partnership, (ii) an officer or director of a corporate general partner of the registered limited liability partnership, (iii) a general partner of a general partner of the registered limited liability partnership, (iv) a member or manager of a limited liability company that is a general partner of the registered limited liability partnership, (v) a trustee of a trust that is a general partner of the registered limited liability partnership, or (vi) a member of the Virginia State Bar, and whose business office is identical with the registered office; or

b. A domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in this Commonwealth, the business office of which is identical with the registered office; provided such a registered agent (i) shall not be its own registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public, one or more natural persons at the office of the registered agent upon whom any process, notice or demand may be served and shall continuously maintain at least one such person at that office. Whenever any such person accepts service, a photographic copy of such instrument shall be attached to the return.

B. The registered agent of a registered limited liability partnership or foreign registered limited liability partnership is the partnership's agent for service of process, notice, or demand required or permitted by law to be served on the partnership. The sole duty of the registered agent is to forward to the registered limited liability partnership or foreign registered limited liability partnership at its last known address any process, notice or demand that is served on the registered agent.

C. A registered limited liability partnership or a foreign registered limited liability partnership *that is registered to transact business in the Commonwealth* may change its registered agent office or the address of its registered office agent, or both, upon filing with the Commission a certificate of change on a form ~~supplied~~ *prescribed and furnished* by the Commission that sets forth:

1. The name of the *registered limited liability partnership or foreign registered limited liability* partnership;

2. The address of its current registered office;

3. If the current address of its registered office is to be changed, the post-office address, including the street and number, if any, of the new ~~address of its~~ registered office, and the name of the city or county in which it is located;

4. The name of its current registered agent;

5. If the current registered agent is to be changed, the name of the new registered agent; and

6. That after the change or changes are made, the *registered limited liability partnership or foreign registered limited liability* partnership will be in compliance with the requirements of this section.

D. ~~Whenever~~ A certificate of change shall forthwith be filed with the Commission by a registered limited liability partnership or foreign registered limited liability partnership whenever its registered agent dies, resigns or ceases to satisfy the requirements of subsection A of this section, a registered limited liability partnership or foreign registered limited liability partnership shall promptly execute and file with the Commission a certificate of change.

E. If A registered limited liability partnership's or foreign registered limited liability partnership's registered agent may sign a certificate as required above if (i) the business address of a the registered agent changes to another place post office address within this the Commonwealth; or (ii) the name of a the registered agent changes, or (iii) a has been legally changed. A registered limited liability partnership's or foreign registered limited liability partnership's new registered agent may sign and submit for filing a certificate as required above if (a) the former registered agent merges is a business entity that has been merged into the new registered agent, (b) the instrument of merger is on record in the office of the clerk of the Commission, and (c) the new registered agent is an entity that is qualified to serve as a registered agent pursuant to subsection A of this section. In either instance, the registered agent or surviving entity shall forthwith file a certificate of change as required in subsection D, except that it need be signed, either manually or in facsimile, only by the registered agent or the surviving entity and which shall recite that a copy of the certificate has been shall be mailed to the principal office of the registered limited liability partnership or foreign registered limited liability partnership on whose behalf it is to be or before the business day following the day on which the certificate is filed at its principal office.

305 F. A registered agent may resign ~~his~~ *the* agency appointment by signing and filing with the
306 Commission a certificate of resignation accompanied by ~~his~~ *a* certification that ~~he has mailed the~~
307 *registered agent shall mail* a copy thereof ~~by certified mail~~ to the ~~address of the~~ principal office of the
308 ~~partnership set forth in the statement of registration for the~~ registered limited liability partnership or
309 foreign registered limited liability partnership *by certified mail on or before the business day following*
310 *the day on which the certificate is filed. The certificate of resignation may include a statement that the*
311 *registered office is also discontinued.* The agency appointment is terminated, *and the registered office*
312 *discontinued if so provided,* on the thirty-first day after the date on which the certificate was filed. If
313 any registered limited liability partnership or foreign registered limited liability partnership whose
314 registered agent has filed with the Commission a certificate of resignation fails to file a certificate of
315 change pursuant to subsection C within 31 days after the date on which the certificate of resignation was
316 filed, the Commission shall mail notice to the registered limited liability partnership or foreign registered
317 limited liability partnership of the impending cancellation of its status as a registered limited liability
318 partnership. If the registered limited liability partnership or foreign registered limited liability partnership
319 fails to file a certificate of change on or before the last day of the second month immediately following
320 the month in which the impending cancellation notice was mailed, the registered limited liability
321 partnership's or foreign registered limited liability partnership's status as a registered limited liability
322 partnership shall be automatically canceled as of that day.

323 G. Whenever a registered limited liability partnership or a foreign registered limited liability
324 partnership fails to appoint or maintain a registered agent in this Commonwealth or whenever its
325 registered agent cannot with reasonable diligence be found at his address, the clerk of the Commission
326 shall be the agent of the partnership upon whom service may be made in accordance with § 12.1-19.1.

327 H. This section does not prescribe the only means, or necessarily the required means, of serving a
328 registered limited liability partnership or a foreign registered limited liability partnership.