

10102316D

HOUSE BILL NO. 859

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 13.1-621, 13.1-820, and 13.1-1004 of the Code of Virginia, relating to processing business entity formation documents by the State Corporation Commission.

Patrons—Cline, Anderson, Athey, Iaquinto and Lingamfelter

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-621, 13.1-820, and 13.1-1004 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-621. Issuance of certificate of incorporation.

If the Commission finds that the articles of incorporation comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation.

If the articles of incorporation are routine, the Commission shall (i) determine whether the articles of incorporation comply with the requirements of law and all required fees have been paid and (ii) if so, issue the certification of incorporation within 48 hours following their receipt. As used in this section, articles of incorporation are routine if they (a) do not raise novel issues requiring the office of the clerk of the Commission to conduct research or seek legal advice, (b) are not for a corporation of a type included in § 13.1-620, (c) are for a corporation whose number of authorized shares do not exceed one million, and (d) do not exceed 50,000 words, as estimated by the office of the clerk upon receipt of the articles of incorporation.

When the certificate of incorporation is effective, the corporate existence shall begin. Upon becoming effective, the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter.

§ 13.1-820. Issuance of certificate of incorporation.

If the Commission finds that the articles of incorporation comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation.

If the articles of incorporation are routine, the Commission shall (i) determine whether the articles of incorporation comply with the requirements of law and all required fees have been paid and (ii) if so, issue the certification of incorporation within 48 hours following their receipt. As used in this section, articles of incorporation are routine if they (a) do not raise novel issues requiring the office of the clerk of the Commission to conduct research or seek legal advice and (b) do not exceed 50,000 words, as estimated by the office of the clerk upon receipt of the articles of incorporation.

When the certificate of incorporation is effective, the corporate existence shall begin. Upon becoming effective, the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act.

§ 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. *Upon the filing of routine articles of organization, the Commission shall (i) determine whether the articles comply with the requirements of law and all required fees have been paid and (ii) if so, issue the certificate therefor within 48 hours following their receipt. As used in this section, articles of organization are routine if they (a) do not raise novel issues requiring the office of the clerk of the Commission to conduct research or seek legal advice and (b) do not exceed 50,000 words, as estimated by the office of the clerk upon receipt of the articles of organization.*

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

INTRODUCED

HB859

59 Commission may deem suitable. Except as otherwise provided by law, the Commission may furnish
60 information from and provide access to any of its records by any means the Commission may deem
61 suitable.

62 D. 1. A certificate issued by the Commission is effective at the time such certificate is issued, unless
63 the certificate relates to articles filed with the Commission and the articles state that the certificate shall
64 become effective at a later time and date specified in the articles. In that event, the certificate shall
65 become effective at the earlier of the time and date so specified or 11:59 p.m. on the fifteenth day after
66 the date on which the certificate is issued by the Commission. Any other document filed with the
67 Commission shall be effective when accepted for filing unless otherwise provided for in this chapter.

68 2. Notwithstanding subdivision 1 of this subsection, any certificate that has a delayed effective time
69 and date shall not become effective if, prior to the effective time and date, the parties to the articles to
70 which the certificate relates file a request for cancellation with the Commission, and the Commission, by
71 order, cancels the certificate.

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