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SENATE BILL NO. 474

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 13.1-759, 13.1-921, and 13.1-1052 of the Code of Virginia, relating to temporary certificates of authority for foreign business entities.

Patrons—Watkins, Blevins, Colgan, Hanger, Hurt, Martin, McDougle, McWaters, Norment, Northam, Quayle, Ruff, Smith, Stosch, Stuart, Vogel, Wagner and Wampler

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-759, 13.1-921, and 13.1-1052 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-759. Application for certificate of authority.

A. A foreign corporation may apply to the Commission for a certificate of authority to transact business in the Commonwealth. The application shall be made on forms prescribed and furnished by the Commission. The application shall set forth:

1. The name of the corporation, and if the corporation is prevented by § 13.1-762 from using its own name in the Commonwealth, a designated name that satisfies the requirements of subsection B of § 13.1-762;

2. The name of the state or other jurisdiction under whose law it is incorporated, and if the corporation was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization, or formation; and (iv) the entity identification number issued to it by the Commission;

3. The date of incorporation and period of duration;

4. The street address of the foreign corporation's principal office;

5. The address of the proposed registered office of the foreign corporation in the Commonwealth (including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located) and the name of its proposed registered agent in the Commonwealth at such address and that the registered agent is either (a) an individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar or (b) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office;

6. The names and usual business addresses of the current directors and officers of the foreign corporation; and

7. The number of shares the corporation is authorized to issue, itemized by classes and series, if any, within a class.

B. The foreign corporation shall deliver with the completed application a copy of its articles of incorporation and all amendments thereto duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it is incorporated.

C. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of authority to transact business in the Commonwealth. *However, if the Commission finds that a foreign corporation that is in good standing under the laws of the state or other jurisdiction under which it is incorporated, as evidenced by a certificate of good standing issued within the preceding 10 days by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose law it is incorporated, has delivered an application pursuant to subsection A and paid all required fees therefor, the Commission, at no charge, immediately shall issue to the foreign corporation a temporary certificate of authority to transact business in the Commonwealth. A temporary certificate of authority to transact business shall be valid for 30 days or until the Commission has issued to the foreign corporation a certificate of authority to transact business in the Commonwealth, whichever occurs first. A temporary certificate of authority to transact business, during its term of validity, for all purposes shall have the same force and effect as a certificate of authority to transact business in the Commonwealth.*

§ 13.1-921. Application for certificate of authority.

A. A foreign corporation may apply to the Commission for a certificate of authority to transact

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SB474

58 business in the Commonwealth. The application shall be made on forms prescribed and furnished by the
59 Commission. The application shall set forth:

60 1. The name of the corporation, and if the corporation is prevented by § 13.1-924 from using its own
61 name in the Commonwealth, a designated name that satisfies the requirements of subsection B of
62 § 13.1-924;

63 2. The name of the state or other jurisdiction under whose laws it is incorporated, and if the
64 corporation was previously authorized or registered to transact business in the Commonwealth as a
65 foreign corporation, limited liability company, business trust, limited partnership, or registered limited
66 liability partnership, with respect to every such prior authorization or registration, (i) the name of the
67 entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization, or formation;
68 and (iv) the entity identification number issued to it by the Commission;

69 3. The date of incorporation and period of duration;

70 4. The street address of the foreign corporation's principal office;

71 5. The address of the proposed registered office of the foreign corporation in the Commonwealth,
72 including both (i) the post office address with street and number, if any, and (ii) the name of the county
73 or city in which it is located, and the name of its proposed registered agent in the Commonwealth at
74 such address and that the registered agent is either (a) an individual who is a resident of Virginia and
75 either an officer or director of the corporation or a member of the Virginia State Bar or (b) a domestic
76 or foreign stock or nonstock corporation, limited liability company, or registered limited liability
77 partnership authorized to transact business in the Commonwealth, the business office of which is
78 identical with the registered office; and

79 6. The names and usual business addresses of the current directors and officers of the foreign
80 corporation.

81 B. The foreign corporation shall deliver with the completed application a copy of its articles of
82 incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official
83 having custody of corporate records in the state or other jurisdiction under whose laws it is incorporated.

84 C. If the Commission finds that the application complies with the requirements of law, and that all
85 required fees have been paid, it shall issue a certificate of authority to transact business in the
86 Commonwealth. *However, if the Commission finds that a foreign corporation that is in good standing*
87 *under the laws of the state or other jurisdiction under which it is incorporated, as evidenced by a*
88 *certificate of good standing issued within the preceding 10 days by the Secretary of State or other*
89 *official having custody of corporate records in the state or other jurisdiction under whose law it is*
90 *incorporated, has delivered an application pursuant to subsection A and paid all required fees therefor,*
91 *the Commission, at no charge, immediately shall issue to the foreign corporation a temporary certificate*
92 *of authority to transact business in the Commonwealth. A temporary certificate of authority to transact*
93 *business shall be valid for 30 days or until the Commission has issued to the foreign corporation a*
94 *certificate of authority to transact business in the Commonwealth, whichever occurs first. A temporary*
95 *certificate of authority to transact business, during its term of validity, for all purposes shall have the*
96 *same force and effect as a certificate of authority to transact business in the Commonwealth.*

97 § 13.1-1052. Application for certificate of registration.

98 A. A foreign limited liability company may apply to the Commission for a certificate of registration
99 to transact business in the Commonwealth. The application shall be made on a form prescribed and
100 furnished by the Commission. The application shall set forth:

101 1. The name of the foreign limited liability company and, if the limited liability company is
102 prevented by § 13.1-1054 from using its own name in the Commonwealth, a designated name that
103 satisfies the requirements of § 13.1-1054;

104 2. The name of the state or other jurisdiction under whose law it is formed, the date of its formation,
105 and if the limited liability company was previously authorized or registered to transact business in the
106 Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or
107 registered limited liability partnership, with respect to every such prior authorization or registration, (i)
108 the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation,
109 organization or formation; and (iv) the entity identification number issued to it by the Commission;

110 3. The address of the proposed registered office of the foreign limited liability company in the
111 Commonwealth (including both (i) the post office address with street and number, if any, and (ii) the
112 name of the county or city in which it is located) and the name of its proposed registered agent in the
113 Commonwealth at such address and that the registered agent is either (a) an individual who is a resident
114 of the Commonwealth and is either (1) a member or manager of the limited liability company, (2) a
115 member or manager of a limited liability company that is a member or manager of the limited liability
116 company, (3) an officer or director of a corporation that is a member or manager of the limited liability
117 company, (4) a general partner of a general or limited partnership that is a member or manager of the
118 limited liability company, (5) a trustee of a trust that is a member or manager of the limited liability
119 company, or (6) a member of the Virginia State Bar, or (b) a domestic or foreign stock or nonstock

corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office;

4. A statement that the clerk of the Commission is irrevocably appointed the agent of the foreign limited liability company for service of process if the foreign limited liability company fails to maintain a registered agent in the Commonwealth as required by § 13.1-1015, the registered agent's authority has been revoked, the registered agent has resigned, or the registered agent cannot be found or served with the exercise of reasonable diligence;

5. The post office address, including the street and number, if any, of the foreign limited liability company's principal office; and

6. A statement evidencing that the foreign limited liability company is a "foreign limited liability company" as defined in § 13.1-1002.

B. The foreign limited liability company shall deliver with the completed application a copy of its articles of organization or other constituent documents and all amendments and corrections thereto filed in the foreign limited liability company's state or other jurisdiction of organization, duly authenticated by the Secretary of State or other official having custody of the limited liability company records in the state or other jurisdiction under whose law it is organized.

C. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of registration to transact business in the Commonwealth. *However, if the Commission finds that a foreign limited liability company that is in good standing under the laws of the state or other jurisdiction under which it is organized, as evidenced by a certificate of good standing, or its equivalent, issued within the preceding 10 days by the Secretary of State or other official having custody of the limited liability company records in the state or other jurisdiction under whose law it is organized, has delivered an application pursuant to subsection A and paid all required fees therefor, the Commission, at no charge, immediately shall issue to the foreign limited liability company a temporary certificate of registration to transact business in the Commonwealth. A temporary certificate of registration to transact business shall be valid for 30 days or until the Commission has issued to the foreign limited liability company a certificate of registration to transact business in the Commonwealth, whichever occurs first. A temporary certificate of registration to transact business, during its term of validity, for all purposes shall have the same force and effect as a certificate of registration to transact business in the Commonwealth.*