

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 379

An Act to amend and reenact § 13.1-1042 of the Code of Virginia, relating to limited liability companies; derivative proceedings.

[S 1356]

Approved March 22, 2011

Be it enacted by the General Assembly of Virginia:

1. That § 13.1-1042 of the Code of Virginia is amended and reenacted as follows:

§ 13.1-1042. Right of action; standing; condition precedent; stay of proceeding.

A. A member may bring an action in the right of a limited liability company to recover a judgment in its favor to the same extent that a shareholder may bring an action for a derivative suit under the Stock Corporation Act, Chapter 9 (§ 13.1-601 et seq.) of this title. Such action may be brought if members or managers with authority to do so have refused to bring the action or if an effort to cause those members or managers to bring the action is not likely to succeed. The derivative action may not be maintained if it appears that the plaintiff does not *shall not* commence or maintain a derivative proceeding unless the member fairly and adequately ~~represent~~ represents the interests of the ~~members~~ and the limited liability company in enforcing the right of the limited liability company and is a proper plaintiff pursuant to § 13.1-1043.

B. No member may commence a derivative proceeding until:

1. A written demand has been made on the limited liability company to take suitable action; and
2. Ninety days have expired from the date delivery of the demand was made unless (i) the member has been notified before the expiration of 90 days that the demand has been rejected by the limited liability company or (ii) irreparable injury to the limited liability company would result by waiting until the end of the 90-day period.

C. If the limited liability company commences a review and evaluation of the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.