

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

4 [S 1356]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 13.1-1042 of the Code of Virginia is amended and reenacted as follows:**

8 § 13.1-1042. Right of action; standing; condition precedent; stay of proceeding.

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

18 B. No member may commence a derivative proceeding until:

19 1. A written demand has been made on the limited liability company to take suitable action; and

20 2. Ninety days have expired from the date delivery of the demand was made unless (i) the member
21 has been notified before the expiration of 90 days that the demand has been rejected by the limited
22 liability company or (ii) irreparable injury to the limited liability company would result by waiting until
23 the end of the 90-day period.

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

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