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SENATE BILL NO. 351

Offered January 11, 2012

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A BILL to amend and reenact §§ 13.1-1002, 13.1-1008, 13.1-1011, 13.1-1012, and 13.1-1050.3 of the Code of Virginia, relating to low-profit limited liability companies.

 Patron—Deeds

 Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1002, 13.1-1008, 13.1-1011, 13.1-1012, and 13.1-1050.3 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-1002. Definitions.

As used in this chapter:

"Articles of organization" means all documents constituting, at any particular time, the articles of organization of a limited liability company. It includes the original articles of organization, the original certificate of organization issued by the Commission, and all amendments to the articles of organization. When the articles of organization have been restated pursuant to any articles of amendment, it includes only the restated articles of organization and any subsequent amendments to the restated articles of organization, but does not include the articles of amendment accompanying the restated articles of organization.

"Bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code.

"Commission" means the State Corporation Commission of Virginia.

"Contribution" means any cash, property or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in his capacity as a member.

"Distribution" means a direct or indirect transfer of money or other property, or incurrence of indebtedness by a limited liability company, to or for the benefit of its members in respect of their interests.

"Domestic business trust" has the same meaning as specified in § 13.1-1201.

"Domestic corporation" has the same meaning as specified in § 13.1-603.

"Domestic limited partnership" has the same meaning as specified in § 50-73.1.

"Domestic partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under § 50-73.88, or predecessor law of the Commonwealth, and includes, for all purposes of the laws of the Commonwealth, a registered limited liability partnership.

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Foreign business trust" has the same meaning as specified in § 13.1-1201.

"Foreign corporation" has the same meaning as specified in § 13.1-603.

"Foreign limited liability company" means an entity, excluding a foreign business trust, that is an unincorporated organization that is organized under laws other than the laws of this Commonwealth, and that affords to each of its members, pursuant to the laws under which it is organized, limited liability with respect to the liabilities of the entity.

"Foreign limited partnership" has the same meaning as specified in § 50-73.1.

"Foreign partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and includes, for all purposes of the laws of the Commonwealth, a foreign registered limited liability partnership.

"Foreign registered limited liability partnership" has the same meanings as specified in §§ 50-2 and 50-73.79.

"Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated organization that is organized and existing under this chapter, or that has become a domestic limited liability company of the Commonwealth pursuant to § 13.1-1010.3, even though also being a non-United States entity organized under laws other than the laws of the Commonwealth, or that

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59 has become a domestic limited liability company of the Commonwealth pursuant to § 56-1, even though
60 also being a limited liability company organized under laws other than the laws of the Commonwealth,
61 or that has become a domestic limited liability company of the Commonwealth pursuant to
62 § 13.1-1010.1, Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9 of this title, or, effective on and after
63 November 1, 2006, Article 14 (§ 13.1-1074 et seq.) of Chapter 12 of this title. A limited liability
64 company's status for federal tax purposes shall not affect its status as a distinct entity organized and
65 existing under this chapter.

66 *"Low-profit limited liability company" or "L3C" means a limited liability company, other than a*
67 *foreign limited liability company, organized under or governed by this chapter, the articles of*
68 *organization of which state that it is formed for both a business purpose and a charitable purpose that*
69 *requires operation of the limited liability company in accordance with the requirements set forth in*
70 *subsection B of § 13.1-1008.*

71 "Manager" or "managers" means a person or persons designated by the members of a limited liability
72 company to manage the limited liability company as provided in the articles of organization or an
73 operating agreement.

74 "Manager-managed limited liability company" means a limited liability company that is managed by
75 a manager or managers as provided for in its articles of organization or an operating agreement.

76 "Member" means a person that has been admitted to membership in a limited liability company as
77 provided in § 13.1-1038.1 and that has not ceased to be a member.

78 "Member-managed limited liability company" means a limited liability company that is not a
79 manager-managed limited liability company.

80 "Membership interest" or "interest" means a member's share of the profits and the losses of the
81 limited liability company and the right to receive distributions of the limited liability company's assets.

82 "Non-United States entity" means a foreign limited liability company (other than one formed under
83 the laws of a state), or a corporation, business trust or association, real estate investment trust,
84 common-law trust, or any other unincorporated business, including a partnership, formed, incorporated,
85 organized, created or that otherwise came into being under the laws of any foreign country or other
86 foreign jurisdiction (other than any state).

87 "Operating agreement" means an agreement of the members as to the affairs of a limited liability
88 company and the conduct of its business, or a writing or agreement of a limited liability company with
89 one member that satisfies the requirements of subdivision A 2 of § 13.1-1023.

90 "Person" has the same meaning as specified in § 13.1-603.

91 "Principal office" means the office, in or out of the Commonwealth, where the principal executive
92 offices of a domestic or foreign limited liability company are located or, if there are no such offices, the
93 office, in or out of the Commonwealth, so designated by the limited liability company. The designation
94 of the principal office in the most recent statement of change filed pursuant to § 13.1-1018.1 shall be
95 conclusive for the purpose of this chapter.

96 "State," when referring to a part of the United States, includes a state, commonwealth and the
97 District of Columbia, and their agencies and governmental subdivisions; and a territory or insular
98 possession, and their agencies and governmental subdivisions, of the United States.

99 "United States" includes a district, authority, bureau, commission, department and any other agency
100 of the United States.

101 § 13.1-1008. Purposes.

102 A. Every limited liability company formed under this chapter has the purpose of engaging in any
103 lawful business, purpose, or activity, whether or not such business, purpose, or activity is carried on for
104 profit, except as otherwise provided by the law of this Commonwealth, unless a more limited purpose is
105 set forth in the articles of organization.

106 B. *A limited liability company that is a low-profit limited liability company has both a business*
107 *purpose and a charitable purpose and shall at all times be operated in accordance with each of the*
108 *requirements of this subsection. The charitable purpose requirements are as follows:*

109 1. *To accomplish one or more charitable or educational purposes within the meaning of*
110 *§ 170(c)(2)(B) of the Internal Revenue Code of 1986, as amended;*

111 2. *To operate so that no significant purpose of the limited liability company is the production of*
112 *income or the appreciation of property; however, the fact that the limited liability company produces*
113 *significant income or capital appreciation is not, in the absence of other factors, conclusive evidence of*
114 *a significant purpose to produce income or accumulate capital; and*

115 3. *To operate so that no purpose of the company is to accomplish one or more political or*
116 *legislative purposes within the meaning of § 170(c)(2)(D) of the Internal Revenue Code of 1986, as*
117 *amended.*

118 *A limited liability company that operates in accordance with these requirements is considered a*
119 *for-profit entity and not a charitable entity for all tax purposes. A limited liability company's failure to*
120 *operate in accordance with these requirements does not affect its status as a limited liability company. If*

a limited liability company that met the requirements of this subsection at its formation at any time ceases to satisfy any one of those requirements, then the company shall cease to be a low-profit limited liability company; however, if the company otherwise complies with this chapter, the company shall continue to exist as a limited liability company and its name shall be changed to satisfy the requirements of subsections A and B of § 13.1-1012.

§ 13.1-1011. Articles of organization.

A. The articles of organization shall set forth:

1. A name for the limited liability company that satisfies the requirements of § 13.1-1012;

2. The post office address, including the street and number, if any, of the limited liability company's initial registered office, the name of the city or county in which it is located, the name of its initial registered agent at that office, and that the agent is either (i) an individual who is a resident of Virginia and one of the following: a member or manager of the limited liability company, a member or manager of a limited liability company that is a member or manager of the limited liability company, an officer or director of a corporation that is a member or manager of the limited liability company, a general partner of a general or limited partnership that is a member or manager of the limited liability company, a trustee of a trust that is a member or manager of the limited liability company, or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in the Commonwealth; ~~and~~

3. The post office address, including the street and number, if any, of the principal office of the limited liability company, which may be the same as the registered office, but need not be within the Commonwealth; *and*

4. *If the limited liability company is formed as a low-profit limited liability company, that the operation of the limited liability company shall meet the charitable purpose requirements of subsection B of § 13.1-1008.*

B. The articles of organization may set forth any other matter that under this chapter is permitted to be set forth in an operating agreement of a limited liability company.

C. The articles of organization need not set forth any of the powers enumerated in this chapter.

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

§ 13.1-1012. Name.

A. A limited liability company name shall contain the words "limited company" or "limited liability company" or their abbreviations "L.C.," "LC," "L.L.C.," or "LLC." *However, if the limited liability company is a low-profit limited liability company, its name shall contain the words "low-profit limited liability company" or the abbreviation "L3C." or "L3C."*

B. A limited liability company name shall not contain:

1. The words "Corporation," "Incorporated," "Limited Partnership" or the abbreviations "Corp.," "Inc.," "L.P." or "LP"; or

2. Any word or phrase the use of which is prohibited by law for such company.

C. Except as authorized by subsection D ~~of this section~~, a limited liability company name shall be distinguishable upon the records of the Commission from:

1. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in this Commonwealth;

2. A limited liability company name reserved under § 13.1-1013;

3. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in this Commonwealth;

4. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws of this Commonwealth or authorized to transact business in this Commonwealth;

5. A corporate name reserved or registered under § 13.1-631, 13.1-632, 13.1-830 or 13.1-831;

6. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in this Commonwealth;

7. The name of a domestic business trust or a foreign business trust registered to transact business in this Commonwealth;

8. A business trust name reserved under § 13.1-1215;

9. The designated name adopted by a foreign business trust because its real name is unavailable for use in this Commonwealth;

10. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in this Commonwealth;

11. A limited partnership name reserved under § 50-73.3; and

12. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in this Commonwealth.

D. A domestic limited liability company may apply to the Commission for authorization to use a

182 name that is not distinguishable upon its records from one or more of the names described in subsection
183 C of this section. The Commission shall authorize use of the name applied for if the other entity
184 consents to the use in writing and submits an undertaking in form satisfactory to the Commission to
185 change its name to a name that is distinguishable upon the records of the Commission from the name of
186 the applying limited liability company.

187 E. The use of assumed names or fictitious names, as provided for in Chapter 5 (§ 59.1-69 et seq.) of
188 Title 59.1, is not affected by this chapter.

189 F. The Commission, in determining whether a limited liability company name is distinguishable upon
190 its records from the name of any of the business entities listed in subsection C, shall not consider any
191 word, phrase, abbreviation, or designation required or permitted under this section and § 13.1-544.1,
192 subsection A of § 13.1-630, § 13.1-1104, subdivision 1 of § 50-73.2, and subdivision A 2 of § 50-73.78
193 to be contained in the name of a business entity formed or organized under the laws of this
194 Commonwealth or authorized or registered to transact business in this Commonwealth.

195 § 13.1-1050.3. Involuntary cancellation of limited liability company existence.

196 A. The existence of a limited liability company may be canceled involuntarily by order of the
197 Commission when it finds that the limited liability company has:

198 1. ~~Continued~~ *Has continued* to exceed or abuse the authority conferred upon it by law;
199 2. ~~Failed~~ *Has failed* to maintain a registered office or a registered agent in the Commonwealth as
200 required by law;

201 3. ~~Failed~~ *Has failed* to file any document required by this chapter to be filed with the Commission;
202 or

203 4. ~~Been~~ *Has been* convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its
204 members or managers constituting a pattern or practice of employing unauthorized aliens in the
205 Commonwealth; or

206 5. *Is a low-profit limited liability company that has ceased to meet any of the requirements in*
207 *subsection B of § 13.1-1008 and has failed for 60 days after ceasing to meet those requirements to file*
208 *articles of amendment with the Commission amending its name to conform with the requirements in*
209 *§ 13.1-1012 governing limited liability company names.*

210 B. Before entering any such order, the Commission shall issue a rule against the limited liability
211 company giving it an opportunity to be heard and show cause why such an order should not be entered.
212 The Commission may issue the rule on its own motion or on motion of the Attorney General.

213 C. The properties and affairs of a limited liability company whose existence has been canceled
214 pursuant to this section shall pass automatically to its managers, or if the limited liability company is
215 managed by its members, then to its members, or if the limited liability company has no managers or
216 members, then to the holders of its interests, in each such case as trustees in liquidation. The trustees
217 shall then proceed to (i) collect the assets of the limited liability company; (ii) sell, convey, and dispose
218 of such of its properties as are not to be distributed in kind to its members; (iii) pay, satisfy, and
219 discharge its liabilities and obligations; and (iv) do all other acts required to liquidate its business and
220 affairs. After paying or adequately providing for the payment of all its obligations, the trustees shall
221 distribute the remainder of its assets, either in cash or in kind, among its members or interest holders
222 according to their respective rights and interests.

223 D. Any limited liability company convicted of the offense listed in subdivision A 4 shall immediately
224 report such conviction to the Commission and file with the Commission an authenticated copy of the
225 judgment or record of conviction. A limited liability company whose existence is canceled pursuant to
226 subdivision A 4 shall not be eligible for reinstatement for a period of not less than one year.