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HOUSE BILL NO. 1748

Offered January 9, 2013

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A *BILL to amend and reenact §§ 13.1-1003, 13.1-1007, 13.1-1009, 13.1-1010.1, 13.1-1014, 13.1-1014.1, 13.1-1050, 13.1-1050.2, 13.1-1050.4, 13.1-1056, 13.1-1056.1, 13.1-1056.3, 13.1-1057, 13.1-1062, 13.1-1074, and 13.1-1077 of the Code of Virginia, relating to the Virginia Limited Liability Company Act.*

Patron—Cosgrove

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1003, 13.1-1007, 13.1-1009, 13.1-1010.1, 13.1-1014, 13.1-1014.1, 13.1-1050, 13.1-1050.2, 13.1-1050.4, 13.1-1056, 13.1-1056.1, 13.1-1056.3, 13.1-1057, 13.1-1062, 13.1-1074, and 13.1-1077 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-1003. Filing requirements.

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this chapter requires or permits to be filed with the Commission.

C. The document shall contain the information required by this chapter. It may contain other information as well.

D. The document shall be typewritten or printed or, if electronically transmitted, shall be in a format that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals. The articles of organization, duly authenticated by the official having custody of the applicable records in the state or country under whose law the limited liability company is formed, which are required of foreign limited liability companies, need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be ~~executed~~ signed in the name of the *domestic or foreign* limited liability company:

1. By any manager or other person who has been delegated the right and power to manage the business and affairs of the limited liability company, or if no managers or such other persons have been selected, by any member of the limited liability company;

2. If the limited liability company has not been formed, or has been formed without any managers or members and no members have been admitted, by an organizer; ~~or~~

3. *In the case of a foreign limited liability company, by a person who is authorized to sign an amendment to the articles of organization or other constituent documents delivered for filing to the Secretary of State or other official having custody of limited liability company records in the state or other jurisdiction under whose law it is formed; or*

4. If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. Any signature may be a facsimile.

H. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

I. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee and any registration fee required by this chapter.

J. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § 59.1-496.

§ 13.1-1007. Unlawful to transact or offer to transact business as a limited liability company unless authorized.

It shall be unlawful for any person to transact business in this Commonwealth as a limited liability company or to offer or advertise to transact business in this Commonwealth as a limited liability company unless the alleged limited liability company is either a domestic *limited* liability company or a

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foreign limited liability company authorized to transact business in this Commonwealth. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

§ 13.1-1009. Powers.

Unless the articles of organization provide otherwise, every limited liability company *has perpetual duration and succession in its name and* has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

1. To sue and be sued, complain and defend in its name;

2. To purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

3. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

4. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other person;

5. To make contracts and guaranties, incur liabilities, borrow money, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;

6. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

7. To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this Commonwealth;

8. To elect and appoint managers, employees and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit;

9. To pay pensions and establish pension plans, pension trusts, profit sharing plans, and benefit and incentive plans for all or any of the current or former managers, members, employees, and agents of the limited liability company or any of its subsidiaries;

10. To make donations to the public welfare or for religious, charitable, scientific, literary or educational purposes;

11. To make payments or donations, or do any other act, not inconsistent with this section or any other applicable law, that furthers the business and affairs of the limited liability company;

12. To pay compensation, or to pay additional compensation to any or all managers, members, and employees on account of services previously rendered to the limited liability company, whether or not an agreement to pay such compensation was made before such services were rendered;

13. To insure for its benefit the life of any of its managers, members, or employees, to insure the life of any member for the purpose of acquiring at his death the interest owned by such member and to continue such insurance after the relationship terminates;

14. To cease its activities, wind up its affairs, and proceed to cancel its existence;

15. To enter into partnership agreements, joint ventures, or other associations of any kind with any person or persons;

16. Subject to such standards and restrictions, if any, as are set forth in its articles of organization or an operating agreement, to indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever, and to pay for or reimburse any member or manager or other person for reasonable expenses incurred by such a person who is a party to a proceeding in advance of final disposition of the proceeding;

17. To transact any lawful business that a corporation, partnership, or other business entity may conduct under the laws of the Commonwealth subject, however, to any and all laws and restrictions that govern or limit the conduct of such activity by such corporation, partnership or other business entity; and

18. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized.

§ 13.1-1010.1. Conversion of partnership to limited liability company.

A. A domestic or foreign partnership or limited partnership may convert to a limited liability company by filing articles of organization that meet the requirements of § 13.1-1011 and include the following:

1. The name of the former partnership or limited partnership *and the state or other jurisdiction under whose law it is formed*;

2. The date and place of filing of the initial certificate or statement of partnership, if any, certificate of limited partnership or similar document of the former partnership or limited partnership; and

3. If the former partnership or limited partnership is a registered limited liability partnership, the date and place of filing of the initial registration as or statement of registered limited liability partnership.

B. The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company shall be approved by the partners in the manner provided in the partnership's

partnership agreement for amendments to the partnership agreement or, if no such provision is made in a partnership agreement, by all the partners.

C. A general partner who becomes a member of a limited liability company as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect to the same extent that the general partner is liable for that obligation before the conversion takes effect. The general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member or manager of a limited liability company, as the case may be, as provided in this chapter.

D. If a foreign partnership or limited partnership that converts into a domestic limited liability company is authorized to transact business in this Commonwealth under Article 9 (§ 50-73.53 et seq.) of Chapter 2.1 of Title 50 or registered as a foreign registered limited liability partnership under Article 9.1 (§ 50-73.112 et seq.) of Chapter 2.2 of Title 50, its certificate of authority or registration, as the case may be, shall be cancelled automatically on the effective date of the certificate of organization issued by the Commission.

§ 13.1-1014. Amendment of articles of organization.

A. A limited liability company may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles, or to delete a provision not required in the articles. An amendment to the articles of organization may delete the name and address of the ~~initial~~ registered agent or registered office, *or the address of the principal office*, if a statement of change described in § 13.1-1016 *or 13.1-1018.1, as the case may be*, is on file with the Commission.

B. For an amendment to the articles of organization of a limited liability company to be adopted, the amendment shall be approved by that number or percentage of members required to amend an operating agreement, unless the articles of organization or a written operating agreement otherwise provide, provided that if the limited liability company has been formed without any members and no members have been admitted, an amendment may be adopted by a majority of the persons named as a manager in the articles of organization or, if there are no members or managers, by a majority of the organizers of the limited liability company.

C. To amend its articles of organization, a limited liability company shall file with the Commission articles of amendment setting forth:

1. The name of the limited liability company;
2. The text of each amendment adopted;
3. The date of each amendment's adoption; and
4. A statement that the amendment was adopted by a vote of the members, by the managers or by the organizers in accordance with this chapter, as the case may be.

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

D. An amendment to articles of organization does not affect a cause of action existing against or in favor of the limited liability company, a proceeding to which the limited liability company is a party, or the existing rights of persons other than members of the limited liability company. An amendment changing a limited liability company's name does not abate a proceeding brought by or against the limited liability company in its former name.

E. A member of a limited liability company does not have a vested property right resulting from any provision of the articles of organization.

§ 13.1-1014.1. Restatement of articles of organization.

A. A limited liability company may restate its articles of organization at any time.

B. The restatement may include one or more amendments to the articles of organization, including an amendment to delete the name and address of the ~~initial~~ registered agent or registered office, *or the address of the principal office*, if a statement of change described in § 13.1-1016 *or 13.1-1018.1, as the case may be*, is on file with the Commission.

C. For a restatement of the articles of organization of a limited liability company to be adopted, the restatement shall be approved by that number or percentage of members required to amend an operating agreement, unless the articles of organization or a written operating agreement otherwise provide, provided that if the limited liability company has been formed without any members and no members have been admitted, a restatement may be adopted by a majority of the persons named as a manager in the articles of organization or, if there are no members or managers, by a majority of the organizers of the limited liability company.

D. A limited liability company restating its articles of organization shall file with the Commission articles of restatement setting forth:

1. The name of the limited liability company immediately prior to restatement;
2. Whether the restatement contains an amendment to the articles of organization;
3. The text of the restated articles of organization or amended and restated articles of organization;

4. The date of adoption of the articles of restatement; and

5. A statement that the restatement was adopted by a vote of the members, by the managers or by the organizers in accordance with this chapter, as the case may be.

E. If the Commission finds that the articles of restatement comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of restatement is effective, the restated articles of organization or amended and restated articles of organization supersede the original articles of organization and all amendments to the original articles of organization.

F. The Commission may certify restated articles of organization or amended and restated articles of organization as the articles of organization currently in effect.

§ 13.1-1050. Articles of cancellation.

A. When the affairs of a limited liability company have been wound up pursuant to § 13.1-1048, it shall file articles of cancellation with the Commission. The articles shall set forth:

1. The name of the limited liability company;

2. *The identification number issued by the Commission to the limited liability company;*

3. The effective date of its certificate of organization;

~~3. The reason for filing the articles of cancellation;~~

4. A statement that the limited liability company has completed the winding up of its affairs; and

5. Any other information the members determine to include therein, *including the reason for filing the articles of cancellation.*

B. If the Commission finds that the articles of cancellation comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of cancellation, canceling the limited liability company's existence. Upon the effective date of such certificate, the existence of the limited liability company shall cease, except for the purpose of suits, other proceedings, and appropriate actions by members as provided in this chapter.

§ 13.1-1050.2. Automatic cancellation of limited liability company existence.

A. Whether or not the notice described in subsection ~~C~~ B of § ~~13.1-1062~~ 13.1-1064 is mailed, if any limited liability company fails to pay its annual registration fee on or before the last day of the third month immediately following its annual registration fee due date each year, the existence of the limited liability company shall be automatically canceled as of that day.

B. If any limited liability company whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-1017 fails to file a statement of change pursuant to § 13.1-1016 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the limited liability company of the impending cancellation of its existence. If the limited liability company fails to file the statement of change on or before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the existence of the limited liability company shall be automatically canceled as of that day.

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

D. No member, manager or other agent of a limited liability company shall have any personal obligation for any liabilities of the limited liability company, whether such liabilities arise in contract, tort, or otherwise, solely by reason of the cancellation of the limited liability company's existence pursuant to this section.

§ 13.1-1050.4. Reinstatement of a limited liability company that has ceased to exist.

A. A limited liability company that has ceased to exist may apply to the Commission for reinstatement within five years thereafter, unless the cancellation was by order of the Commission (i) entered pursuant to subdivision A 1 of § 13.1-1050.3 or (ii) entered pursuant to § 13.1-1047 and the circuit court's decree directing dissolution contains no provision for reinstatement of the existence of the limited liability company.

B. To have its existence reinstated, a limited liability company shall provide the Commission with the following:

1. An application for reinstatement ~~signed by a manager or member of the limited liability company,~~ which may be in the form of a letter, *that includes the identification number issued by the Commission to the limited liability company;*

2. A reinstatement fee of \$100;

3. All annual registration fees and penalties that were due before the limited liability company ceased to exist and that would have been assessed or imposed to the date of reinstatement if the limited liability company's existence had not been canceled;

4. If the name of the limited liability company does not comply with the provisions of § 13.1-1012 at the time of reinstatement, articles of amendment to the articles of organization to change the limited liability company's name to a name that satisfies the provisions of § 13.1-1012, with the fee required by this chapter for the filing of articles of amendment; and

5. If the limited liability company's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-1016.

C. If the limited liability company complies with the provisions of this section, the Commission shall enter an order of reinstatement of existence. Upon entry of the order, the existence of the limited liability company shall be deemed to have continued from the date of the cancellation as if cancellation had never occurred, and any liability incurred by the limited liability company or a member, manager, or other agent after the cancellation and before the reinstatement is determined as if cancellation of the limited liability company's existence had never occurred.

§ 13.1-1056. Voluntary cancellation of certificate of registration.

A. A foreign limited liability company registered to transact business in the Commonwealth may apply to the Commission for a certificate of cancellation to cancel its certificate of registration. The application shall be on a form prescribed and furnished by the Commission, which shall set forth:

1. The name of the foreign limited liability company ~~and~~, the name of the state or other jurisdiction under whose ~~jurisdiction law~~ it is or was formed, ~~and the identification number issued by the Commission to the limited liability company;~~

2. ~~That If applicable, a statement that the foreign limited liability company is in existence and has not been merged into or consolidated with another entity or converted into another type of entity or, if the foreign limited liability company has been merged into or consolidated with another entity or converted into another type of entity, that the application is signed on behalf of the foreign limited liability company by the surviving or resulting entity was a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it was organized and that it was not the surviving entity of the merger;~~

3. That the foreign limited liability company is not transacting business in the Commonwealth and that it surrenders its registration to transact business in the Commonwealth;

4. That the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the Commonwealth;

5. A mailing address to which the clerk of the Commission may mail a copy of any process served on him under subdivision 4; and

6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the limited liability company.

B. If the Commission finds that the application complies with the requirements of law and all required fees have been paid, it shall issue a certificate of cancellation canceling the certificate of registration.

C. Before any foreign limited liability company registered to transact business in the Commonwealth cancels its existence, it shall file with the Commission an application for a certificate of cancellation. Whether or not such application is filed, the cancellation of the existence of such foreign limited liability company shall not take away or impair any remedy available against such limited liability company for any right or claim existing or any liability incurred prior to such cancellation. Any such action or proceeding against such foreign limited liability company may be defended by such limited liability company in its name. The members, managers, and officers shall have power to take such action as shall be appropriate to protect such remedy, right, or claim. The right of a foreign limited liability company that has canceled its existence to institute and maintain in its name actions, suits, or proceedings in the courts of the Commonwealth shall be governed by the law of the state of its organization.

D. Service of process on the clerk of the Commission is service of process on a foreign limited liability company whose certificate of registration has been canceled pursuant to this section. Service upon the clerk shall be made in accordance with § 12.1-19.1, and service upon the foreign limited liability company may be made in any other manner permitted by law.

§ 13.1-1056.1. Automatic cancellation of certificate of registration.

A. Whether or not the notice described in subsection ~~C~~ B of § ~~13.1-1062~~ 13.1-1064 is mailed, if any foreign limited liability company fails to pay its annual registration fee on or before the last day of the

305 third month immediately following its annual registration fee due date each year, such foreign limited
306 liability company shall automatically cease to be authorized to transact business in the Commonwealth
307 and its certificate of registration shall be automatically canceled as of that day.

308 B. If any foreign limited liability company whose registered agent has filed with the Commission a
309 statement of resignation pursuant to § 13.1-1017 fails to file a statement of change pursuant to
310 § 13.1-1016 within 31 days after the date on which the statement of resignation was filed, the
311 Commission shall mail notice to the foreign limited liability company of the impending cancellation of
312 its certificate of registration. If the foreign limited liability company fails to file the statement of change
313 on or before the last day of the second month immediately following the month in which the impending
314 cancellation notice was mailed, the foreign limited liability company shall automatically cease to be
315 authorized to transact business in the Commonwealth and its certificate of registration shall be
316 automatically canceled as of that day.

317 C. The automatic cancellation of a foreign limited liability company's certificate of registration
318 constitutes the appointment of the clerk of the Commission as the foreign limited liability company's
319 agent for service of process in any proceeding based on a cause of action arising during the time the
320 foreign limited liability company was registered to transact business in the Commonwealth. Service of
321 process on the clerk of the Commission under this subsection is service on the foreign limited liability
322 company and shall be made on the clerk in accordance with § 12.1-19.1.

323 D. ~~Revocation~~ Cancellation of a foreign limited liability company's certificate of registration does not
324 terminate the authority of the registered agent of the foreign limited liability company.

325 **§ 13.1-1056.3. Reinstatement of a certificate of registration that has been canceled.**

326 A. A foreign limited liability company whose certificate of registration to transact business in the
327 Commonwealth has been canceled may be relieved of the cancellation and have its certificate of
328 registration reinstated by the Commission within five years of the date of cancellation unless the
329 certificate of registration was canceled by order of the Commission entered pursuant to subdivision A 1
330 of § 13.1-1056.2.

331 B. To have its certificate of registration reinstated, a foreign limited liability company shall provide
332 the Commission with the following:

333 1. An application for reinstatement ~~signed by a manager or member of the limited liability company,~~
334 *which may be in the form of a letter, that includes the identification number issued by the Commission*
335 *to the limited liability company;*

336 2. A reinstatement fee of \$100;

337 3. All annual registration fees and penalties that were due before the certificate of registration was
338 canceled and that would have been assessed or imposed to the date of reinstatement if the limited
339 liability company had not had its certificate of registration canceled;

340 4. A duly authenticated copy of any amendments or corrections made to the articles of organization
341 or other constituent documents of the foreign limited liability company and any mergers entered into by
342 the foreign limited liability company from the date of cancellation of its certificate of registration to the
343 date of its application for reinstatement, along with an amended application for registration if required
344 for an amendment or a correction, and all fees required by this chapter for the filing of such
345 instruments;

346 5. If the name of the foreign limited liability company does not comply with the provisions of
347 § 13.1-1054 at the time of reinstatement, an amended application for registration to adopt a designated
348 name for use in the Commonwealth that satisfies the requirements of § 13.1-1054, with the fee required
349 by this chapter for the filing of an amended application for registration; and

350 6. If the foreign limited liability company's registered agent has filed a statement of resignation and a
351 new registered agent has not been appointed, a statement of change pursuant to § 13.1-1016.

352 C. If the foreign limited liability company complies with the provisions of this section, the
353 Commission shall enter an order of reinstatement, reinstating the foreign limited liability company's
354 certificate of registration to transact business in the Commonwealth.

355 **§ 13.1-1057. Transaction of business without registration.**

356 A. A foreign limited liability company transacting business in the Commonwealth may not maintain
357 any action, suit, or proceeding in any court of the Commonwealth until it has registered in the
358 Commonwealth.

359 B. The successor to a foreign limited liability company that transacted business in the
360 Commonwealth without registering in the Commonwealth and the assignee of a cause of action arising
361 out of that business may not maintain a proceeding based on that cause of action in any court in the
362 Commonwealth until the foreign limited liability company or its successor has registered in the
363 Commonwealth.

364 C. The failure of a foreign limited liability company to register in the Commonwealth does not
365 impair the validity of any contract or act of the foreign limited liability company or prevent the foreign
366 limited liability company from defending any action, suit, or proceeding in any court of the

Commonwealth.

D. If a foreign limited liability company transacts business in the Commonwealth without a certificate of registration, each member, manager or employee of the limited liability company who does any of such business in the Commonwealth knowing that a certificate of registration is required and has not been obtained shall be liable for a penalty of not less than \$500 and not more than \$5,000 to be imposed by the Commission, after the limited liability company and the individual have been given notice and an opportunity to be heard.

E. *A Suits, actions, and proceedings may be initiated against a foreign limited liability company, by transacting that transacts business in the Commonwealth without a certificate of registration; appoints the clerk of the Commission as its agent for service of process with respect to causes of action arising out of the transaction of business in the Commonwealth by serving process on any manager, managing member, or agent of the limited liability company doing such business or, if none can be found, on the clerk of the Commission or on the limited liability company in any other manner permitted by law. If any foreign limited liability company transacts business in the Commonwealth without a certificate of registration, it shall by transacting such business be deemed to have thereby appointed the clerk of the Commission its agent for service of process. Service upon the clerk shall be made in accordance with § 12.1-19.1.*

§ 13.1-1062. Assessment of annual registration fees; annual registration fees to be paid by domestic and foreign limited liability companies.

A. Each year, the Commission shall assess against every domestic limited liability company, and every each foreign limited liability company registered to transact business in the Commonwealth shall pay into the state treasury on or before the last day of the twelfth month next succeeding the month in which it was organized or registered to transact business in the Commonwealth, and by such date in each year thereafter, an annual registration fee of \$50, and each such limited liability company shall pay into the state treasury the annual registration fee herein imposed, in accordance with subsection B provided that the initial annual registration fee to be paid by a domestic limited liability company created by entity conversion shall be due in the year after the calendar year in which it converted.

The annual registration fee shall be imposed irrespective of any specific license tax or other tax or fee imposed by law upon the limited liability company for the privilege of carrying on its business in the Commonwealth or upon its franchise, property or receipts.

B. The Commission shall enter an order establishing the schedule for assessment of limited liability companies and payments due for such assessment. Such order shall provide either:

1. That each year the Commission shall ascertain from its records each domestic limited liability company and each foreign limited liability company registered to transact business in the Commonwealth, as of July 1 of each year, and shall assess against each such limited liability company the annual registration fee imposed in subsection A, and, except as provided in subsection C, that each such limited liability company shall pay the assessment due into the state treasury on or before September 30 in each year after the calendar year in which it was formed or registered to transact business in the Commonwealth; provided that the initial annual registration fee to be paid by a domestic limited liability company created by conversion shall be due in the year after the calendar year in which it converted; or

2. That each Each year, the Commission shall ascertain from its records each domestic limited liability company and each foreign limited liability company registered to transact business in the Commonwealth as of the first day of the second month next preceding the month in which it was organized or registered to transact business in the Commonwealth, and, except as provided in subsection C A, that the limited liability company shall pay the assessment due into the state treasury on or before the last day of the twelfth month next succeeding the month in which it was organized or registered to transact business in the Commonwealth, and by such date in each year thereafter; provided that the initial annual registration fee to be paid by a domestic limited liability company created by conversion shall be due in the year after the calendar year in which it converted shall assess against each such limited liability company the annual registration fee herein imposed.

C. At the discretion of the Commission, the annual registration fee due date for a limited liability company may be extended, on a monthly basis for a period of not less than one month nor more than 11 months, at the request of its registered agent of record or as may be necessary to distribute annual registration fee due dates of limited liability companies as equally as practicable throughout the year on a monthly basis.

D. A statement of the assessment, when made, shall be forwarded by the clerk of the Commission to the Comptroller and to each domestic and foreign limited liability company.

E. Any domestic limited liability company that has ceased to exist in the Commonwealth because of the issuance of a certificate of cancellation of existence, certificate of organization surrender, or certificate of entity conversion, or any foreign limited liability company that has obtained a certificate of

428 *cancellation, effective on or before its annual registration fee due date pursuant to subsection A in any*
429 *year, shall not be required to pay the annual registration fee for that year. Any domestic or foreign*
430 *limited liability company that has merged, effective on or before its annual registration fee due date*
431 *pursuant to subsection A in any year, into a surviving domestic or foreign corporation, limited liability*
432 *company, business trust, limited partnership, or partnership that files with the Commission an*
433 *authenticated copy of the instrument of merger on or before such date, shall not be required to pay the*
434 *annual registration fee for that year. Any foreign limited liability company that has converted, effective*
435 *on or before its annual registration fee due date pursuant to subsection A in any year, to a different*
436 *entity type that files with the Commission an authenticated copy of the instrument of entity conversion*
437 *on or before such date, shall not be required to pay the annual registration fee for that year. The*
438 *Commission shall cancel the annual registration fee assessments specified in this subsection that remain*
439 *unpaid.*

440 F. Registration fee assessments that have been paid shall not be refunded.

441 F. G. The fees paid into the state treasury under this section and the fees collected under § 13.1-1005
442 shall be set aside and paid into the special fund created under § 13.1-775.1, and shall be used only by
443 the Commission as it deems necessary to defray the costs of the Commission and of the office of the
444 clerk of the Commission in supervising, implementing, administering and enforcing the provisions of
445 this chapter. The projected excess of fees collected over the costs of administration and enforcement so
446 incurred shall be paid into the general fund prior to the close of each fiscal year, based on the
447 unexpended balance of the special fund at the end of the prior fiscal year. An adjustment of this transfer
448 amount to reflect actual fees collected shall occur during the first quarter of the succeeding fiscal year.

449 **§ 13.1-1074. Domestication.**

450 A. A foreign limited liability company may become a domestic limited liability company ~~in the~~
451 ~~manner provided in this article if the laws of the jurisdiction in which the foreign limited liability~~
452 ~~company is organized authorize it to domesticate in another jurisdiction.~~ The laws of this
453 Commonwealth shall govern the effect of domesticating in this Commonwealth pursuant to this article.

454 B. A domestic limited liability company not required by law to be a domestic limited liability
455 company may become a foreign limited liability company if the jurisdiction in which the limited liability
456 company intends to domesticate allows for the domestication. Regardless of whether the laws of the
457 foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved
458 in the manner provided in this article. The laws of the jurisdiction in which the limited liability
459 company domesticates shall govern the effect of domesticating in that jurisdiction.

460 **§ 13.1-1077. Articles of domestication.**

461 A. After the domestication of a foreign limited liability company is approved in the manner required
462 by the laws of the jurisdiction in which the limited liability company is organized, the limited liability
463 company shall file with the Commission articles of domestication setting forth:

464 1. The name of the limited liability company immediately prior to the filing of the articles of
465 domestication and, if that name is unavailable for use in the Commonwealth or the limited liability
466 company desires to change its name in connection with the domestication, a name that satisfies the
467 requirements of § 13.1-1012;

468 2. The plan of domestication; ~~and~~

469 3. The original jurisdiction of the limited liability company and the date the limited liability company
470 was organized in that jurisdiction, and each subsequent jurisdiction and the date the limited liability
471 company was domesticated in each such jurisdiction, if any, prior to the filing of the articles of
472 domestication; ~~and~~

473 4. *A statement that the domestication is permitted by the laws of the jurisdiction in which the limited*
474 *liability company is organized and that the limited liability company has complied with those laws in*
475 *effecting the domestication.*

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

478 C. The certificate of domestication shall become effective pursuant to subsection D of § 13.1-1004.

479 D. A foreign limited liability company's existence as a domestic limited liability company shall begin
480 when the certificate of domestication is effective. Upon becoming effective, the certificate of
481 domestication shall be conclusive evidence that all conditions precedent required to be performed by the
482 foreign limited liability company have been complied with and that the limited liability company has
483 been organized under this chapter.

484 E. If the foreign limited liability company is authorized to transact business in the Commonwealth
485 under Article 10 (§ 13.1-1051 et seq.), its certificate of registration shall be canceled automatically on
486 the effective date of the certificate of domestication issued by the Commission.