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HOUSE BILL NO. 2113

Offered January 9, 2013

Prefiled January 9, 2013

A *BILL to amend and reenact §§ 13.1-1202, 13.1-1203, 13.1-1204, 13.1-1214, 13.1-1238, 13.1-1238.1, 13.1-1239, 13.1-1246, 13.1-1246.1, 13.1-1246.3, 13.1-1247, 13.1-1249, and 13.1-1252 of the Code of Virginia and to repeal § 13.1-1253 of the Code of Virginia, relating to the Virginia Business Trust Act.*

Patron—Purkey

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1202, 13.1-1203, 13.1-1204, 13.1-1214, 13.1-1238, 13.1-1238.1, 13.1-1239, 13.1-1246, 13.1-1246.1, 13.1-1246.3, 13.1-1247, 13.1-1249, and 13.1-1252 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-1202. 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 also contain other information.

D. The document shall be typewritten or printed. 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 business trust name need not be in English if written in English letters or Arabic or Roman numerals. The articles of trust, duly authenticated by the official having custody of the applicable records in the state or other jurisdiction under whose law the business trust is formed, which are required of each foreign business trust, 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* business trust:

1. By a trustee or by an officer of the business trust;

2. If the business trust has not been formed, by the person forming the business trust; or

3. If the business trust 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 executes the document. 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.

§ 13.1-1203. Issuance of certificate by Commission; recordation of documents.

A. Whenever this chapter conditions the effectiveness of a document upon the issuance of a certificate by the Commission to evidence the effectiveness of the document, the Commission shall by order issue the certificate if it finds that the document complies with the provisions of this chapter and that all required fees have been paid. The Commission shall admit any such certificate to record in its office.

B. The existence of a business trust shall begin at the time the Commission issues a certificate of trust, unless a later date and time are specified as provided by subsection D. The certificate of trust shall be conclusive evidence that all conditions precedent required to be performed by the person or persons forming the business trust have been complied with and that the business trust has been formed under this chapter.

C. Whenever the Commission is directed to admit any document to record in its office, it shall cause it to be spread upon its record books or to be recorded or reproduced in any other manner the Commission may deem suitable. Except as otherwise provided by law, the Commission may furnish

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59 information from and provide access to any of its records by any means the Commission may deem
60 suitable.

61 D. 1. A certificate issued by the Commission is effective at the time such certificate is issued, unless
62 the certificate relates to articles filed with the Commission and the articles state that the certificate shall
63 become effective at a later time and date specified in the articles. In that event, the certificate shall
64 become effective at the earlier of the time and date so specified or at 11:59 p.m. on the fifteenth day
65 after the date on which the certificate is issued by the Commission. Any other document filed with the
66 Commission shall be effective when accepted for filing unless otherwise provided for in this chapter.

67 2. Notwithstanding subdivision 1 ~~of this subsection~~, any certificate that has a delayed effective time
68 and date shall not become effective if, prior to the effective time and date, the parties to the articles to
69 which the certificate relates file a request for cancellation with the Commission, and the Commission, by
70 order, cancels the certificate.

71 3. Notwithstanding subdivision 1 ~~of this subsection~~, for purposes of §§ 13.1-1214 and 13.1-1244, any
72 certificate that has a delayed effective date shall be deemed to be effective when the certificate is issued.

73 *E. The Commission shall have the power to act upon a petition filed by a business trust at any time
74 to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a
75 person without authority to act for the business trust.*

76 **§ 13.1-1204. Fees for filing documents and issuing certificates.**

77 The Commission shall charge and collect the following fees, except as provided in § 12.1-21.2:

78 1. For filing any one of the following, the fee shall be \$100:

- 79 a. Articles of trust.
80 b. An application for registration as a foreign business trust.
81 ~~c. Articles of reinstatement.~~
82 ~~d. Articles of domestication.~~
83 ~~e. d. Articles of entity conversion.~~

84 2. For filing any one of the following, the fee shall be \$25:

- 85 a. Articles of amendment.
86 b. Articles of restatement.
87 c. Articles of cancellation.
88 d. Articles of correction referred to in § 13.1-1213, a copy of an amendment or a correction referred
89 to in § 13.1-1245, or an amended application for registration referred to in § 13.1-1245, provided that an
90 amended application shall not require a separate fee when it is filed with a copy of an amendment or a
91 correction referred to in § 13.1-1245.
92 e. A copy of an instrument of merger of a foreign business trust referred to in § 13.1-1250.
93 f. Articles of merger.
94 g. Articles of trust surrender.
95 h. A copy of an instrument of entity conversion of a foreign business trust holding a certificate of
96 registration to transact business in the Commonwealth.
97 i. An application for a certificate of cancellation of a foreign business trust.
98 3. For filing any one of the following, the fee shall be \$10:
99 a. An application to reserve or to renew the reservation of a name for use by a domestic or foreign
100 business trust.

101 b. A notice of the transfer of a name reserved for use by a domestic or foreign business trust.

102 4. For issuing a certificate pursuant to § 13.1-1285, the fee shall be \$6.

103 **§ 13.1-1214. Name.**

104 A. ~~The name of each A business trust, as set forth in its articles of trust, name~~ may contain:

105 1. *One or more of the following words: "company," "association," "club," "foundation," "fund,"*
106 *"institute," "society," "union," or "syndicate," or "trust," or abbreviations of like import; and*

107 2. *The word "trust," provided that the context or remaining words in the name meet the standards*
108 *prescribed in §§ 6.2-939 and 6.2-1040.*

109 B. A business trust name shall not contain:

110 1. Any word, abbreviation, or combination of characters that states or implies the business trust is a
111 corporation, a limited liability company, a limited partnership, or a registered limited liability
112 partnership; or

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

114 C. Except as authorized by subsection D, a business trust name shall be distinguishable upon the
115 records of the Commission from:

116 1. The name of a domestic business trust or a foreign business trust registered to transact business in
117 the Commonwealth;

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

119 3. The designated name adopted by a foreign business trust because its real name is unavailable for
120 use in the Commonwealth;

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

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

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

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

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

D. A domestic business trust may apply to the Commission for authorization to use a name that is not distinguishable upon its records from one or more of the names described in subsection C. The Commission shall authorize use of the name applied for if the other domestic or foreign business trust or other business entity consents to the use in writing and submits an undertaking in form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying business trust.

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

F. The Commission, in determining whether a business trust name is distinguishable upon its records from the name of any of the business entities listed in subsection C, shall not consider any word, phrase, abbreviation, or designation required or permitted under § 13.1-544.1, subsection A of § 13.1-630, subsection A of § 13.1-1012, § 13.1-1104, subsection A of § 50-73.2, and subdivision A 2 of § 50-73.78 to be contained in the name of a business entity formed or organized under the laws of the Commonwealth or authorized or registered to transact business in the Commonwealth.

§ 13.1-1238. Articles of cancellation.

A. When the affairs of a business trust have been wound up pursuant to § 13.1-1236, it shall file articles of cancellation with the Commission. The articles shall set forth:

1. The name of the business trust;

2. *The identification number issued by the Commission to the business trust;*

3. The effective date of its certificate of trust;

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

4. A statement that the business trust has completed the winding up of its affairs; and

5. Any other information the trustees 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 business trust's existence. Upon the effective date of such certificate, the existence of the business trust shall cease, except for the purpose of suits, other proceedings, and appropriate actions by trustees and beneficial owners as provided in this chapter.

§ 13.1-1238.1. Automatic cancellation of business trust existence.

A. ~~If Whether or not the notice described in subsection B of § 13.1-1254 is mailed, if~~ any business trust fails to pay its annual registration fee on or before December 31 of the year assessed, its existence shall be automatically canceled as of that day.

B. If any business trust whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-1222 fails to file a statement of change pursuant to § 13.1-1221 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the business trust of impending cancellation of its existence. If the business trust fails to file the statement of change before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the existence of the business trust shall be automatically canceled as of that day.

C. The properties and affairs of a business trust whose existence has been canceled pursuant to this section shall pass automatically to its trustees as trustees in liquidation. The trustees shall then proceed to (i) collect the assets of the business trust; (ii) sell, convey, and dispose of such of its properties as are not to be distributed in kind to its beneficial owners; (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 liquidating trustees shall distribute the

182 remainder of its assets, either in cash or in kind, among its beneficial owners according to their
183 respective rights and interests.

184 D. No beneficial owner, trustee, or other agent of a business trust shall have any personal obligation
185 for any liabilities of the business trust, whether such liabilities arise in contract, tort, or otherwise, solely
186 by reason of the cancellation of the business trust's existence pursuant to this section.

187 **§ 13.1-1239. Reinstatement of a business trust that has ceased to exist.**

188 A. A business trust that has ceased to exist may apply to the Commission for reinstatement within
189 five years thereafter, unless the cancellation was by order of the Commission (i) entered pursuant to
190 subdivision A 1 of § 13.1-1238.2 or (ii) entered pursuant to § 13.1-1235 and the circuit court's decree
191 directing dissolution contains no provision for reinstatement of the existence of the business trust.

192 B. To have its existence reinstated, a business trust shall provide the Commission with the following:

193 1. An application for reinstatement ~~signed by a trustee or an officer of the trust~~, which may be in the
194 form of a letter, *that includes the identification number issued by the Commission to the business trust*;

195 2. A reinstatement fee of \$100;

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

199 4. If the name of the business trust does not comply with the provisions of § 13.1-1214 at the time
200 of reinstatement, articles of amendment to the articles of trust to change the business trust's name to a
201 name that satisfies the provisions of § 13.1-1214, with the fee required by this chapter for the filing of
202 articles of amendment; and

203 5. If the business trust's registered agent has filed a statement of resignation and a new registered
204 agent has not been appointed, a statement of change pursuant to § 13.1-1221.

205 C. If the business trust complies with the provisions of this section, the Commission shall enter an
206 order of reinstatement of existence. Upon entry of the order, the existence of the business trust shall be
207 deemed to have continued from the date of the cancellation as if the cancellation had never occurred,
208 and any liability incurred by the business trust or a beneficial owner, trustee or other agent after the
209 cancellation and before the reinstatement is determined as if cancellation of the business trust's existence
210 had never occurred.

211 **§ 13.1-1246. Voluntary cancellation of certificate of registration.**

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

215 1. The name of the foreign business trust and the name of the state or other jurisdiction under whose
216 ~~jurisdiction law it is or was formed~~, *and the identification number issued by the Commission to the*
217 *business trust*;

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

224 3. That the foreign business trust is not transacting business in the Commonwealth and that it
225 surrenders its registration to transact business in the Commonwealth;

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

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

232 6. A commitment to notify the clerk of the Commission in the future of any change in the mailing
233 address of the business trust.

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

237 C. Before any foreign business trust registered to transact business in the Commonwealth cancels its
238 existence, it shall file with the Commission an application for a certificate of cancellation. Whether or
239 not such application is filed, the cancellation of the existence of such foreign business trust shall not
240 take away or impair any remedy available against such business trust for any right or claim existing or
241 any liability incurred prior to such cancellation. Any such action or proceeding against such foreign
242 business trust may be defended by such business trust in its name. The trustees and beneficial owners
243 shall have power to take such action as shall be appropriate to protect such remedy, right, or claim. The

right of a foreign business trust 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 formation.

D. Service of process on the clerk of the Commission is service of process on a foreign business trust 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 business trust may be made in any other manner permitted by law.

§ 13.1-1246.1. Automatic cancellation of registration.

A. If *Whether or not the notice described in subsection B of § 13.1-1254 is mailed, if any foreign business trust fails to pay its annual registration fee on or before December 31 of the year assessed, such foreign business trust shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of registration to transact business in the Commonwealth shall be automatically canceled as of that day.*

B. If any foreign business trust whose registered agent has filed with the Commission a statement of resignation pursuant to § 13.1-1222 fails to file a statement of change pursuant to § 13.1-1221 within 31 days after the date on which the statement of resignation was filed, the Commission shall mail notice to the foreign business trust of the impending cancellation of its certificate of registration. If the business trust fails to file the statement of change before the last day of the second month immediately following the month in which the impending cancellation notice was mailed, the business trust shall automatically cease to be authorized to transact business in the Commonwealth and its certificate of registration shall be automatically canceled as of that day.

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

D. *Cancellation of a foreign business trust's certificate of registration does not terminate the authority of the registered agent of the foreign business trust.*

§ 13.1-1246.3. Reinstatement of a certificate of registration that has been canceled.

A. A foreign business trust whose certificate of registration to transact business in the Commonwealth has been canceled may be relieved of the cancellation and have its certificate of registration reinstated by the Commission within five years of the date of cancellation unless the certificate of registration was canceled by order of the Commission entered pursuant to subdivision A 1 of § 13.1-1246.2.

B. To have its certificate of registration reinstated, a foreign business trust shall provide the Commission with the following:

1. An application for reinstatement ~~signed by a trustee or an officer of the business trust~~, which may be in the form of a letter, *that includes the identification number issued by the Commission to the business trust;*

2. A reinstatement fee of \$100;

3. All annual registration fees and penalties that were due before the certificate of registration was canceled and that would have been assessed or imposed to the date of reinstatement if the business trust had not had its certificate of registration canceled;

4. A duly authenticated copy of any amendments or corrections made to the articles of trust or other constituent documents of the foreign business trust and any mergers entered into by the foreign business trust from the date of cancellation of its certificate of registration to the date of its application for reinstatement, with an amended application for registration if required for an amendment or a correction, and all fees required by this chapter for the filing of such instruments;

5. If the name of the foreign business trust does not comply with the provisions of § 13.1-1214 at the time of reinstatement, an amended application for registration to adopt a designated name for use in the Commonwealth that satisfies the requirements of § 13.1-1214, along with the fee required by this chapter for the filing of an amended application for registration; and

6. If the foreign business trust's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-1221.

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

§ 13.1-1247. Transaction of business without registration; civil penalty.

A. A foreign business trust transacting business in the Commonwealth shall not maintain any action, suit, or proceeding in any court of the Commonwealth until it has registered in the Commonwealth.

B. The successor to a foreign business trust that transacted business in the Commonwealth without registering in the Commonwealth and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in the Commonwealth until the foreign business trust or its successor has registered in the Commonwealth.

C. The failure of a foreign business trust to register in the Commonwealth shall not impair the validity of any contract or act of the foreign business trust or prevent the foreign business trust from defending any action, suit, or proceeding in any court of the Commonwealth.

D. If a foreign business trust transacts business in the Commonwealth without a certificate of registration, each trustee, officer or employee of the business trust who does any such business in the Commonwealth knowing that a certificate of authority is required and has not been obtained shall be liable for a civil penalty of not less than \$500 and not more than \$5,000, which may be imposed by the Commission or by any court in the Commonwealth before which an action against the business trust may lie, after the business trust and the individual have been given notice and an opportunity to be heard. Civil penalties paid pursuant to this chapter shall be deposited to the credit of the Literary Fund.

E. *A Suits, actions, and proceedings may be initiated against a foreign business trust, 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 trustee, officer, or agent of the business trust doing such business, or, if none can be found, on the clerk of the Commission or on the business trust in any other manner permitted by law. If any foreign business trust 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.*

§ 13.1-1249. Transactions not constituting doing business.

A. The following activities of a foreign business trust, among others, do not constitute transacting business within the meaning of this article:

1. Maintaining, defending, or settling any proceeding;
2. Holding meetings of its beneficial owners or carrying on any other activities concerning its internal affairs;
3. Maintaining bank accounts;
4. Maintaining offices or agencies for the transfer, exchange and registration of the foreign business trust's securities or maintaining trustees or depositaries with respect to those securities;
5. Selling through independent contractors;
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;
7. Creating or acquiring indebtedness, deeds of trust, and security interests in real or personal property;
8. Securing or collecting debts or enforcing deeds of trust and security interests in property securing the debts;
9. Owning, without more, real or personal property;
10. Conducting an isolated transaction that is completed within ~~thirty~~ 30 days and that is not one in the course of repeated transactions of a like nature; ~~or~~
11. For a period of less than ~~ninety~~ 90 consecutive days, producing, directing, filming, crewing or acting in motion picture feature films, television series or commercials, or promotional films that are sent outside of the Commonwealth for processing, editing, marketing and distribution; *or*
12. *Serving, without more, as a general partner of, or as a partner in a partnership that is a general partner of, a domestic or foreign limited partnership that does not otherwise transact business in the Commonwealth.*

B. The term "transacting business" as used in this section shall have no effect on personal jurisdiction under § 8.01-328.1.

C. The list of activities in subsection A ~~of this section~~ is not exhaustive. This section does not apply in determining the contacts or activities that may subject a foreign business trust to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.

§ 13.1-1252. Assessment of annual registration fees; annual registration fee to be paid by domestic and foreign business trusts.

A. ~~Every~~ *Each* domestic business trust; and ~~every~~ *each* foreign business trust registered to transact business in the Commonwealth, shall pay into the state treasury on or before October 1 in each year after the calendar year in which it was formed or registered to transact business in the Commonwealth an annual registration fee of \$50, *provided that the initial annual registration fee to be paid by a domestic business trust 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 business trust for the privilege of carrying on its business in the Commonwealth or upon its franchise, property, or receipts.

B. Each year, the Commission shall ascertain from its records each domestic business trust and each foreign business trust registered to transact business in the Commonwealth as of July 1 and, except as provided in subsection A, shall assess against each such business trust the annual registration fee herein imposed.

C. 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 business trust.

D. Any domestic business trust that has ceased to exist in the Commonwealth because of the issuance of a certificate of cancellation of existence, certificate of trust surrender, or certificate of entity conversion, or any foreign business trust that has obtained a certificate of cancellation, effective on or before its annual registration fee due date pursuant to subsection A in any year, shall not be required to pay the annual registration fee for that year. Any domestic or foreign business trust that has merged, effective on or before its annual registration fee due date pursuant to subsection A in any year, into a surviving domestic or foreign corporation, limited liability company, business trust, limited partnership, or partnership that files with the Commission an authenticated copy of the instrument of merger on or before such date, shall not be required to pay the annual registration fee for that year. Any foreign business trust that has converted, effective on or before its annual registration fee due date pursuant to subsection A in any year, to a different entity type that files with the Commission an authenticated copy of the instrument of entity conversion on or before such date, shall not be required to pay the annual registration fee for that year. The Commission shall cancel the annual registration fee assessments specified in this subsection that remain unpaid.

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

F. The fees paid into the state treasury under this section and the fees collected under § 13.1-1204 shall be set aside and paid into the special fund created under § 13.1-775.1, and shall be used only by the Commission as it deems necessary to defray the costs of the Commission and of the office of the clerk of the Commission in supervising, implementing, administering and enforcing the provisions of this chapter. The projected excess of fees collected over the costs of administration and enforcement so incurred shall be paid into the general fund prior to the close of each fiscal year, based on the unexpended balance of the special fund at the end of the prior fiscal year. An adjustment of this transfer amount to reflect actual fees collected shall occur during the first quarter of the succeeding fiscal year.

2. That § 13.1-1253 of the Code of Virginia is repealed.

3. That the provisions of § 13.1-1214 of the Code of Virginia as amended and reenacted by this act (i) shall be applied prospectively only; (ii) shall not affect the validity of any certificate issued, or other action taken, by the State Corporation Commission that was effective prior to the effective date of this act with respect to the name of a domestic or foreign business trust; and (iii) shall not be construed to require any such business trust that was in compliance with applicable laws regarding the propriety of its name prior to the effective date of this act to change its name or take other action to comply with the requirements of this act.