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HOUSE BILL NO. 130

Offered January 13, 2016

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A BILL to amend and reenact §§ 13.1-1011 and 13.1-1052 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 12 of Title 13.1 an article numbered 15, consisting of sections numbered 13.1-1081 through 13.1-1090, relating to limited liability companies; series of members, managers, interests, and assets.

Patrons—Webert, Head and Freitas

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1011 and 13.1-1052 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 12 of Title 13.1 an article numbered 15, consisting of sections numbered 13.1-1081 through 13.1-1090, as follows:

§ 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.

B. *The information provided by the limited liability company under subsection A shall also be provided for each separate series of the limited liability company authorized to operate under Article 15 (§ 13.1-1081 et seq.).*

C. 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.

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

E. 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.

§ 13.1-1052. Application for certificate of registration.

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

1. The name of the foreign limited liability company and, if the limited liability company is prevented by § 13.1-1054 from using its own name in the Commonwealth, a designated name that satisfies the requirements of § 13.1-1054;

2. The name of the state or other jurisdiction under whose law it is formed, the date of its formation, and if the limited liability company was previously authorized or registered to transact business in the Commonwealth as a foreign corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership, with respect to every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization or formation; and (iv) the entity identification number issued to it by the Commission;

3. The address of the proposed registered office of the foreign limited liability company in the Commonwealth (including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located) and the name of its proposed registered agent in the Commonwealth at such address and that the registered agent is either (a) an individual who is a resident of the Commonwealth and is either (1) a member or manager of the limited liability company, (2) a member or manager of a limited liability company that is a member or manager of the limited liability

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company, (3) an officer or director of a corporation that is a member or manager of the limited liability company, (4) a general partner of a general or limited partnership that is a member or manager of the limited liability company, (5) a trustee of a trust that is a member or manager of the limited liability company, or (6) a member of the Virginia State Bar, or (b) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in the Commonwealth, the business office of which is identical with the registered office;

4. A statement that the clerk of the Commission is irrevocably appointed the agent of the foreign limited liability company for service of process if the foreign limited liability company fails to maintain a registered agent in the Commonwealth as required by § 13.1-1015, the registered agent's authority has been revoked, the registered agent has resigned, or the registered agent cannot be found or served with the exercise of reasonable diligence;

5. The post office address, including the street and number, if any, of the foreign limited liability company's principal office; and

6. A statement evidencing that the foreign limited liability company is a "foreign limited liability company" as defined in § 13.1-1002.

B. *The information provided by the foreign limited liability company under subsection A shall also be provided for each separate series of the limited liability company authorized to operate under Article 15 (§ 13.1-1081 et seq.).*

C. The foreign limited liability company shall deliver with the completed application a copy of its articles of organization or other constituent documents and all amendments and corrections thereto filed in the foreign limited liability company's state or other jurisdiction of organization, duly authenticated by the Secretary of State or other official having custody of the limited liability company records in the state or other jurisdiction under whose law it is organized.

D. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of registration to transact business in the Commonwealth.

Article 15.

Series of Members, Managers, or Interests.

§ 13.1-1081. Series of members, managers, or interests authorized; name of series.

A. *An operating agreement may establish or provide for the establishment of a designated series of members, managers, or interests having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations. To the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective.*

B. *Except in the case of a foreign limited liability company that has adopted a name that is not the name under which it is registered in its jurisdiction of organization, as permitted under §§ 13.1-1052 and 13.1-1054, the name of the series with limited liability is required to contain the entire name of the limited liability company and be distinguishable from the names of the other series set forth in the articles of organization. In the case of a foreign limited liability company that has adopted a name that is not the name under which it is registered in its jurisdiction of organization, as permitted under §§ 13.1-1052 and 13.1-1054, the name of the series with limited liability is required to contain the entire name under which the foreign limited liability company has been admitted to transact business in the Commonwealth.*

§ 13.1-1082. Enforcement of debts, liabilities, and obligations against assets of series.

A. *Notwithstanding any other provisions of law to the contrary, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof. Such particular series shall be deemed to have possession, custody, and control only of the books, records, information, and documentation related to such series and not of the books, records, information, and documentation related to the limited liability company as a whole or any other series thereof if all of the following apply:*

1. *The operating agreement creates one or more series;*

2. *Separate and distinct records are maintained for or on behalf of any such series;*

3. *The assets associated with any such series, whether held directly or indirectly, including through a nominee or otherwise, are accounted for separately from the other assets of the limited liability company or of any other series;*

4. *The operating agreement provides for the limitations on liabilities of a series described in this subsection;*

5. *Notice of the limitation on liabilities of a series described in this subsection is included in the limited liability company's articles of organization; and*

6. *The limited liability company has filed articles of organization that separately identify each series that is to have limited liability under this section.*

B. With respect to a particular series, unless otherwise provided in the operating agreement, none of the debts, liabilities, obligations, and expenses incurred, contracted for or otherwise existing with respect to a limited liability company generally, or any other series thereof, shall be enforceable against the assets of such series, subject to the provisions of subsection A.

C. Compliance with subdivisions A 5 and 6 shall constitute notice of such limitation of liability of a series.

D. A series with limited liability shall be treated as a separate entity to the extent set forth in the articles of organization. Each series with limited liability may, in its own name, contract, hold title to assets, grant security interests, sue and be sued, and otherwise conduct business and exercise the powers of a limited liability company under this chapter. The limited liability company and any of its series may elect to consolidate its operations as a single taxpayer to the extent permitted under applicable law, elect to work cooperatively, elect to contract jointly, or elect to be treated as a single business for the purposes of qualification or authorization to do business in this or any other state. Such elections shall not affect the limitation of liability set forth in this section except to the extent that the series has specifically accepted joint liability by contract.

§ 13.1-1083. Commencement of existence of series; change of name of series; execution of series documents.

A. Upon filing of articles of organization setting forth the name of each series with limited liability, in compliance with § 13.1-1004 or amendments under § 13.1-1014, the series' existence shall begin. The issuance by the Commission of a certificate of organization setting forth the name of a series shall be conclusive evidence that all required conditions have been met and that the series has been or shall be legally organized and formed under this article and is notice for all purposes of all other facts required to be set forth therein.

B. The name of a series with limited liability under this article may be changed by filing articles of amendment with the Commission pursuant to § 13.1-1014, identifying the series whose name is being changed and the new name of such series. If not the same as the limited liability company, the names of the members of a member-managed series or of the managers of a manager-managed series may be changed by an amendment to the articles of organization with the Commission.

C. A series with limited liability under this article may be dissolved by filing with the Commission articles of amendment pursuant to § 13.1-1014 identifying the series being dissolved or by the dissolution of the limited liability company as provided in Article 9 (§ 13.1-1046 et seq.). Except to the extent otherwise provided in the operating agreement, a series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company. The dissolution of a series established in accordance with § 13.1-1082 shall not affect the limitation on liabilities of such series provided by § 13.1-1082. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under Article 9 (§ 13.1-1046 et seq.).

D. Articles of organization or articles of amendment described in subsection A or B may be executed by the limited liability company or any manager, person, or entity designated in the operating agreement for the limited liability company.

E. If different from the limited liability company, the articles of organization shall list the names of the members for each series if the series is member-managed or the names of the managers if the series is manager-managed.

F. A series of a limited liability company shall be deemed to be in good standing as long as the limited liability company is in good standing.

G. The registered agent and registered office for the limited liability company appointed under § 13.1-1015 shall serve as the agent and office for service of process for each series in the Commonwealth.

§ 13.1-1084. Authority and powers of series.

A series established in accordance with this article may carry on any lawful business, purpose, or activity, whether or not for profit. Unless otherwise provided in a limited liability company agreement, a series established in accordance with this article shall have the power and capacity to, in its own name, contract, hold title to assets, including real, personal, and intangible property, grant liens and security interests, and sue and be sued.

§ 13.1-1085. Agreement to be obligated for liabilities of series.

Under an operating agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations, and liabilities of one or more series.

§ 13.1-1086. Classes or groups associated with series.

A. An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers, and duties as an operating agreement may provide and may make provision for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers, and duties as may from time to time be

182 established, including rights, powers, and duties senior and subordinate to or different from existing
183 classes and groups of members or managers associated with the series.

184 B. A series may be managed either by the member or members associated with the series or by the
185 manager or managers chosen by the members of such series, as provided in the operating agreement.
186 Unless otherwise provided in an operating agreement, the management of a series shall be vested in the
187 members associated with such series.

188 C. An operating agreement may grant to all or certain identified members or managers or to a
189 specified class or group of the members or managers associated with a series the right to vote
190 separately or with all or any class or group of the members or managers associated with the series, on
191 any matter. An operating agreement may provide that any member or class or group of members
192 associated with a series shall have no voting rights.

193 D. Except as modified in this section, the provisions of this chapter that are generally applicable to
194 limited liability companies and their managers, members, and transferees shall be applicable to each
195 particular series with respect to the operation of such series.

196 E. Except as otherwise provided in an operating agreement, any event specified in this chapter or in
197 an operating agreement that causes a manager to cease to be a manager with respect to a series shall
198 not, in itself, cause such manager to cease to be a manager of the limited liability company or with
199 respect to any other series thereof.

200 F. Except as otherwise provided in an operating agreement, any event specified in this chapter or in
201 an operating agreement that causes a member to cease to be associated with a series shall not, in itself,
202 cause such member to cease to be associated with any other series, terminate the continued membership
203 of a member in the limited liability company, or cause the termination of the series, regardless of
204 whether such member was the last remaining member associated with such series.

205 **§ 13.1-1087. Distributions with respect to series.**

206 A. Subject to subsection B of this section and § 13.1-1091, and unless otherwise provided in an
207 operating agreement, at the time a member associated with a series that has been established in
208 accordance with this article becomes entitled to receive a distribution with respect to such series, the
209 member has the status of, and is entitled to all remedies available to, a creditor of the series, with
210 respect to the distribution. A limited liability company agreement may provide for the establishment of a
211 record date with respect to allocations and distributions with respect to a series.

212 B. A limited liability company may make a distribution with respect to a series that has been
213 established in accordance with this article. A limited liability company shall not make a distribution
214 with respect to a series that has been established in accordance with this article to a member to the
215 extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such
216 series, other than liabilities to members on account of their limited liability company interests with
217 respect to such series and liabilities for which the recourse of creditors is limited to specified property
218 of such series, exceed the fair value of the assets associated with such series, except that the fair value
219 of property of the series that is subject to a liability for which the recourse of creditors is limited shall
220 be included in the assets associated with such series only to the extent that the fair value of that
221 property exceeds that liability. For purposes of this subsection, "distribution" does not include amounts
222 constituting reasonable compensation for present or past services or reasonable payments made in the
223 ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A
224 member who receives a distribution in violation of this subsection, and who knew at the time of the
225 distribution that the distribution violated this subsection, shall be liable to a series for the amount of the
226 distribution. A member who receives a distribution in violation of this subsection, and who did not know
227 at the time of the distribution that the distribution violated this subsection, shall not be liable for the
228 amount of the distribution. This subsection shall not affect any obligation or liability of a member under
229 an agreement or other applicable law for the amount of a distribution.

230 **§ 13.1-1088. Assignment of member's interest with respect to series.**

231 Unless otherwise provided in an operating agreement, a member shall cease to be associated with a
232 series and to have the power to exercise any rights or powers of a member with respect to such series
233 upon the assignment of all of the member's limited liability company interest with respect to such series.
234 Except as otherwise provided in an operating agreement, any event under this chapter or an operating
235 agreement that causes a member to cease to be associated with a series shall not, in itself, cause such
236 member to cease to be associated with any other series or terminate the continued membership of a
237 member in the limited liability company or cause the termination of the series, regardless of whether
238 such member was the last remaining member associated with such series.

239 **§ 13.1-1089. Termination of series.**

240 Except to the extent otherwise provided in an operating agreement, a series may be terminated and
241 its affairs wound up without causing the dissolution of the limited liability company. The termination of
242 a series established in accordance with § 13.1-1082 shall not affect the limitation on liabilities of such
243 series provided by § 13.1-1082. A series is terminated and its affairs shall be wound up upon the

dissolution of the limited liability company or otherwise upon the first to occur of the following:

1. The occurrence of any events specified in writing in the articles of organization or an operating agreement;

2. The unanimous written consent of the members associated with such series; or

3. The entry of a decree of judicial dissolution under § 13.1-1047.

§ 13.1-1090. Foreign limited liability company with series.

A. If a limited liability company with the ability to establish series does not register to do business in a foreign jurisdiction for itself and its series, a series of a limited liability company may itself register to do business as a limited liability company in the foreign jurisdiction in accordance with the laws of the foreign jurisdiction.

B. If a foreign limited liability company, as permitted in the jurisdiction of its organization, has established a series having separate rights, powers, or duties and has limited the liabilities of such series so that the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series are enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, or so that the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally or any other series thereof are not enforceable against the assets of such series, then the limited liability company, on behalf of itself or any of its series, or any of its series on its own behalf may register to do business in the Commonwealth in accordance with this chapter. The limitation of liability shall also be stated on the application for certificate registration. As required under § 13.1-1052, the application for certificate of registration filed shall identify each series being registered to do business in the Commonwealth by the foreign limited liability company. Unless otherwise provided in the operating agreement, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series of such a foreign limited liability company shall be enforceable against the assets of such series only and not against the assets of the foreign limited liability company generally or any other series thereof, and none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to such a foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.