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SENATE BILL NO. 1309

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 3, 2017)

(Patron Prior to Substitute—Senator Norment)

A *BILL to amend and reenact §§ 59.1-69, 59.1-70, and 59.1-74 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 59.1-70.1 and 59.1-75.1, relating to transacting business under an assumed name; central filing of assumed or fictitious name certificates; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-69, 59.1-70, and 59.1-74 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 59.1-70.1 and 59.1-75.1 as follows:

§ 59.1-69. Certificate required of person transacting business under assumed name.

A. *As used in this chapter, unless the context requires a different meaning:*

"Commission" means the State Corporation Commission.

"Person" has the meaning prescribed in § 1-230.

B. No person, ~~partnership, limited liability company or corporation~~ shall conduct or transact business in this the Commonwealth under any assumed or fictitious name unless such person, ~~partnership, limited liability company or corporation~~ shall sign and acknowledge a certificate setting forth the name under which such business is to be conducted or transacted, and the names of each person, ~~partnership, limited liability company or corporation~~ owning the same, with their respective post-office and residence addresses (and, (i) when the partnership or limited liability company is a foreign limited partnership or limited liability company, the date of the certificate of registration to transact business in this Commonwealth issued to it by the State Corporation Commission, or (ii) when the corporation is a foreign corporation, the date of the certificate of authority to transact business in this Commonwealth issued to it by the State Corporation Commission), and file the same *files* in the office of the clerk of the court in which deeds are recorded in the county or city wherein the business is to be conducted *Commission a certificate of assumed or fictitious name.*

~~B. C.~~ No person, ~~partnership, limited liability company or corporation~~ shall use an assumed or fictitious name in the conduct of ~~its the person's~~ business to intentionally misrepresent the geographic origin or location of any such ~~the person or entity~~.

§ 59.1-70. Filing a certificate with State Corporation Commission; fee.

A. When business is conducted in this Commonwealth under an assumed or fictitious name by a limited partnership filing a certificate under § 50-73.11, by a foreign limited partnership required to register with the Commission under § 50-73.54, or by a limited liability company or corporation, such domestic or foreign limited partnership, limited liability company or corporation shall file in the office of the clerk of the State Corporation Commission a copy of the certificate described in § 59.1-69, duly attested by the clerk of the court in which the original is on file. *The certificate of assumed or fictitious name shall be on a form prescribed by the Commission that sets forth the following:*

1. *The name of the person who will be conducting business under the assumed or fictitious name;*
2. *The assumed or fictitious name of the business;*
3. *Whether the person who will be conducting business under the assumed or fictitious name is an individual or, if not, the type of legal or commercial entity of the person;*

4. *If the person who will be conducting business under the assumed or fictitious name is an individual, the post office address of the individual's office or residence, which shall include a street address, city or town, state, and zip code;*

5. *If the person who will be conducting business under the assumed or fictitious name is a domestic or foreign corporation, limited liability company, business trust, or limited partnership authorized by the Commission to transact business in the Commonwealth, the identification number issued by the Commission to the person;*

6. *If the person who will be conducting business under the assumed or fictitious name is a domestic or foreign partnership that has filed with the Commission a statement of partnership authority or a statement of registration as a registered limited liability partnership that has not been canceled, the identification number issued by the Commission to the partnership;*

7. *If the person who will be conducting business under the assumed or fictitious name is not subject to subdivision 4, 5, or 6, the post office address of the person's principal place of business, which shall include a street address, city or town, state, and zip code; and*

8. *The printed name and title of the individual signing the certificate of assumed or fictitious name.*

B. *The certificate of assumed or fictitious name shall be signed by (i) the individual who will be*

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60 *conducting business under the assumed or fictitious name or (ii) an authorized representative of the*
61 *person who will be conducting business under the assumed or fictitious name when the person is not an*
62 *individual.*

63 C. The State Corporation clerk of the Commission shall charge a ~~ten-dollar~~ fee of \$10 for the filing
64 of a ~~fictitious or an~~ certificate of assumed or fictitious name.

65 B. When business is no longer conducted in this Commonwealth under an assumed or fictitious name
66 by a limited partnership filing a certificate under ~~§ 50-73.11~~, by a foreign limited partnership required to
67 register with the Commission under ~~§ 50-73.54~~, or by a limited liability company or corporation, the
68 domestic or foreign limited partnership, limited liability company or corporation may file with the clerk
69 of the State Corporation Commission a copy of a release certificate, duly attested by the clerk of the
70 court in which the certificate is on file. The Commission shall charge a ten-dollar fee for the filing of
71 such certificate.

72 **§ 59.1-70.1. Certificate of release.**

73 A. When a person is no longer conducting business in the Commonwealth under an assumed or
74 fictitious name on file with the clerk of the Commission, the name may be released by filing a certificate
75 of release of an assumed or fictitious name in the office of the clerk of the Commission that is signed (i)
76 by the individual who conducted business under the assumed or fictitious name, (ii) on behalf of the
77 person who conducted business under the assumed or fictitious name when the person is not an
78 individual, (iii) by a court-appointed fiduciary of the person, or (iv) by the person's successor in interest
79 when the person is not an individual.

80 B. When a person is no longer conducting business in the Commonwealth under an assumed or
81 fictitious name on file with a circuit court, the name may be released by filing a certificate of release of
82 an assumed or fictitious name with the clerk of the court that is signed and acknowledged by the
83 person, a court-appointed fiduciary of the person, or, when the person is not an individual, the person's
84 successor in interest.

85 C. The certificate of release of an assumed or fictitious name shall be on a form prescribed by the
86 Commission. The fee to file a certificate of release of an assumed or fictitious name with the clerk of
87 the Commission or with the clerk of the court shall be \$10.

88 **§ 59.1-74. Recordation of certificates and registration of names.**

89 A. The clerk of the court with whom ~~the~~ a certificate ~~provided for in § 59.1-69~~ of assumed or
90 fictitious name is filed shall keep a book in which all ~~such~~ certificates ~~shall be of assumed or fictitious~~
91 ~~name and certificates of release of an assumed or fictitious name~~ are recorded, with their date of record,
92 and shall keep a register in which shall be entered in alphabetical order the name under which every
93 ~~such~~ business is conducted and the names of every person owning the ~~same~~ business. The clerk shall be
94 entitled to a fee of ten dollars for filing and recording such certificate and entering such names.

95 B. No license shall be issued by ~~the Commissioner~~ a commissioner of the Revenue revenue until the
96 a certificate of assumed or fictitious name has been made and filed (i) in the office of the clerk of the
97 Commission or (ii) prior to May 1, 2019, in the clerk's office of the clerk of the court, and evidence of
98 ~~same produced before him~~ the filing has been provided to the commissioner of the revenue by the
99 person conducting business under the assumed or fictitious name.

100 **§ 59.1-75.1. Penalty for signing false certificate.**

101 A. It is unlawful for any person to sign a certificate the person knows is false in any material respect
102 with intent that the certificate be delivered to the Commission for filing.

103 B. Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor.

104 2. That the provisions of this act shall become effective on May 1, 2019.