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HOUSE BILL NO. 2109

Offered January 15, 1997

A BILL to amend and reenact §§ 13.1-615, 13.1-752, 13.1-768, 13.1-775, 13.1-775.1, 13.1-815, 13.1-914, 13.1-930, 13.1-936, and 13.1-936.1 of the Code of Virginia, relating to corporations; annual registration fees; annual reports.

Patron—Parrish

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-615, 13.1-752, 13.1-768, 13.1-775, 13.1-775.1, 13.1-815, 13.1-914, 13.1-930, 13.1-936, and 13.1-936.1 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-615. Fees to be collected by Commission; payment of fees prerequisite to Commission action; exceptions.

A. The Commission shall assess the registration fees and shall charge and collect the filing fees, charter fees, and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document which is not accepted for filing, at any time within one year from the date of its payment.

B. The Commission shall not issue any certificate or file any document specified in this chapter, except the report required by § 13.1-775, until all fees, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid. However, a certificate of termination of corporate existence may be issued under the provisions of § 13.1-751 without requiring prepayment of any such assessment. Except as provided hereinafter, the issuance of such certificate shall not have the effect of releasing any obligation that has accrued in favor of this Commonwealth on account of such assessment.

Any domestic corporation which has ceased to exist because of the issuance of a certificate of termination of corporate existence or any foreign corporation which has obtained a certificate of withdrawal, effective prior to ~~March 15~~ its annual report due date pursuant to subsection C of § 13.1-775 in any year, shall not be required to pay the registration fee for that year. Any domestic or foreign corporation which has merged, effective prior to ~~March 15~~ its annual report due date pursuant to subsection C of § 13.1-775 in any year, into a surviving domestic corporation or into a surviving foreign corporation that files with the Commission the certificate of merger prior to such date, shall not be required to pay the registration fee for that year. The Commission shall enter an order withdrawing and cancelling the registration fee assessments specified in this section that remain unpaid. Any foreign corporation which has amended its articles of incorporation to reduce the number of shares it is authorized to issue, effective prior to ~~January 1~~ its annual assessment date pursuant to subsection B of § 13.1-775.1 of a given year, and has timely filed an authenticated copy of the amendment with the Commission pursuant to § 13.1-760 after ~~January 1~~ its annual assessment date pursuant to subsection B of § 13.1-775.1, shall have its registration fee reassessed to reflect the new number of authorized shares. Registration fee assessments that have been paid shall not be refunded.

§ 13.1-752. Automatic termination of corporate existence.

A. If any domestic corporation fails to file the annual report required by this chapter in a timely manner, the Commission shall mail notice to it of impending termination of its corporate existence. Whether or not such notice is mailed, if the corporation fails to file the annual report before ~~September 1 of the year it is due~~ the last day of the fourth month immediately following its annual report due date each year, the corporate existence of the corporation shall automatically cease as of ~~September 1~~ as of that day and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to collect the assets of the corporation; sell, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders; pay, satisfy and discharge its liabilities and obligations; and 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 shareholders according to their respective rights and interests.

B. 1. Any domestic corporation shall pay the annual registration fee required by law on or before ~~April 1 (following the January assessment)~~ the corporation's annual report due date determined in accordance with subsection C of § 13.1-775 of each year. If the corporation pays the annual registration fee for the year assessed after ~~April 1~~ such date of that year, the corporation shall incur a penalty of ten percent of the registration fee, or ten dollars, whichever is greater.

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60 2. If any domestic corporation fails to pay by ~~June 1~~ *the due date* of the year assessed the annual
61 registration fee, the Commission shall mail notice to the corporation of its impending termination of
62 corporate existence. The corporate existence of the corporation shall be automatically terminated if any
63 such fee is unpaid as of ~~September 1~~ *the last day of the fourth month immediately following the due*
64 *date* of that year, and its properties and affairs shall pass automatically to its directors as trustees in
65 liquidation. The trustees shall then proceed to (i) collect the assets of the corporation, (ii) sell, convey
66 and dispose of such of its properties as are not to be distributed in kind to its stockholders, (iii) pay,
67 satisfy and discharge its liabilities and obligations and (iv) do all other acts required to liquidate its
68 business and affairs. After paying or adequately providing for the payment of all its obligations, the
69 trustees shall distribute the remainder of its assets, either in cash or in kind, among its stockholders
70 according to their respective rights and interests.

71 § 13.1-768. Automatic revocation of certificate of authority.

72 A. If any foreign corporation fails to file the annual report required by this chapter in a timely
73 manner, the Commission shall mail notice to it of impending revocation of its certificate of authority to
74 do business in this Commonwealth. Whether or not such notice is mailed, if the corporation fails to file
75 the annual report before ~~September 1~~ *of the year it is due, the last day of the fourth month immediately*
76 *following its annual report due date each year, such* foreign corporation shall automatically cease to be
77 authorized to do business in this Commonwealth and its certificate of authority shall be automatically
78 revoked as of ~~September 1~~ *as of that day*.

79 B. 1. Any foreign corporation shall pay the annual registration fee required by law on or before ~~April~~
80 ~~1~~ *(following the January assessment) the corporation's annual report due date determined in accordance*
81 *with subsection C of § 13.1-775* of each year. If the corporation pays the annual registration fee for the
82 year assessed after ~~April 1~~ *such date* of that year, the corporation shall incur a penalty of ten percent of
83 the registration fee, or ten dollars, whichever is greater.

84 2. If any foreign corporation fails to pay by ~~June 1~~ *the due date* of the year assessed the annual
85 registration fee, the Commission shall mail notice to the corporation of impending revocation of its
86 certificate of authority. The corporation shall automatically cease to be authorized to do business in this
87 Commonwealth if any such fee is unpaid as of ~~September 1~~ *the last day of the fourth month*
88 *immediately following the due date* of that year, and its certificate of authority shall be automatically
89 revoked.

90 § 13.1-775. Annual report of domestic and foreign corporations.

91 A. Each domestic corporation, and each foreign corporation authorized to transact business in this
92 Commonwealth, shall file, within the time prescribed by this chapter, an annual report setting forth:

93 1. The name of the corporation, the address of its principal office and the state or country under
94 whose laws it is incorporated;

95 2. The address of the registered office of the corporation in this Commonwealth, including both (i)
96 the post-office address with street and number, if any, and (ii) the name of the county or city in which
97 it is located, and the name of its registered agent in this Commonwealth at such address;

98 3. The names and post-office addresses of the directors and the principal officers of the corporation;
99 and

100 4. A statement of the aggregate number of shares which the corporation has authority to issue,
101 itemized by class.

102 B. The report shall be made on forms furnished by the Commission and shall supply the information
103 as of the date of the report.

104 C. ~~The~~ *Except as otherwise provided in this subsection, the* annual report of a domestic or foreign
105 corporation shall be filed with the Commission ~~between January 1 and April 1 of each year after the~~
106 ~~calendar year in which it was incorporated or authorized to transact business in this Commonwealth by~~
107 ~~the last day of the twelfth month next succeeding the date it was incorporated or authorized to transact~~
108 ~~business in this Commonwealth, and by such date in each year thereafter. The report shall be filed no~~
109 ~~earlier than three months prior to its due date each year. If the report appears to be incomplete or~~
110 ~~inaccurate, the Commission shall return it for correction or explanation. Otherwise the Commission shall~~
111 ~~file it in the clerk's office. At the discretion of the Commission the annual report due date for a~~
112 ~~corporation may be extended, on a monthly basis for a period of not less than one month nor more than~~
113 ~~eleven months, at the request of its registered agent of record or as may be necessary to distribute~~
114 ~~annual report due dates of corporations as equally as practicable throughout the year on a monthly~~
115 ~~basis.~~

116 § 13.1-775.1. Annual registration fees for domestic and foreign corporations.

117 A. Every domestic corporation and every foreign corporation authorized to do business in this
118 Commonwealth, whose number of authorized shares is 5,000 shares or less, shall pay into the state
119 treasury ~~on or before April 1 in each year after the calendar year in which it was incorporated or~~
120 ~~authorized to transact business in this Commonwealth by its due date each calendar year~~ an annual
121 registration fee of fifty dollars.

Any such corporation whose number of authorized shares is more than 5,000 shall pay an annual registration fee of \$50 plus \$15 for each 5,000 shares or fraction thereof in excess of 5,000 shares up to a maximum of \$850.

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

B. The State Corporation Commission shall ascertain from its records the number of authorized shares of each corporation authorized to do business in this Commonwealth, as of ~~January 1 of each year~~ *the first day of the second month next preceding the month of the corporation's annual registration fee due date each year*, and shall assess against each corporation the registration fee herein imposed. *In any year in which a corporation's due date is extended pursuant to this chapter the registration fee assessment shall be increased by a prorated amount to cover the period of extension.* A statement of the assessment, when made, shall be forwarded by the Clerk of the State Corporation Commission, ~~before March 15,~~ to the Comptroller and to each corporation.

C. Any corporation which fails to pay the registration fee herein imposed within the time prescribed shall incur a penalty as provided in subdivision B 1 of § 13.1-752 or § 13.1-768, as the case may be, which shall be added to the amount of the registration fee. The penalty shall be in addition to any other penalty or liability provided by law.

D. The fees paid into the state treasury under this section shall be set aside as a special fund to be used only by the State Corporation Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the Clerk of the Commission, together with all other costs incurred by the Commission in supervising, implementing and administering the provisions of Part 4 (§ 8.9-401 et seq.) of Title 8.9, this title, except for Chapters 5 (§ 13.1-501 et seq.) and 8 (§ 13.1-557 et seq.) and Article 6 (§ 55-142.1 et seq.) of Chapter 6 of Title 55, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal year.

§ 13.1-815. Fees to be collected by Commission; payment of fees prerequisite to Commission action; exceptions.

A. The Commission shall assess the registration fees and shall charge and collect filing fees, the charter fees and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document which is not accepted for filing, at any time within one year from the date of its payment.

B. The Commission shall not issue any certificate or file any document specified in this chapter, except the report required by § 13.1-936, until all fees, charges, fines, penalties and interest assessed, imposed, charged or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid. However, a certificate of termination of corporate existence may be issued under the provisions of § 13.1-913 without requiring prepayment of any such assessment, but the issuance of such certificate shall not have the effect of releasing any obligation that has accrued in favor of this Commonwealth on account of such assessment, except as provided hereinafter.

Any domestic corporation which has ceased to exist because of the issuance of a certificate of termination of corporate existence or any foreign corporation which has obtained a certificate of withdrawal, effective prior to ~~March 15~~ *its annual report due date pursuant to subsection C of § 13.1-936* in any year, shall not be required to pay the registration fee for that year. Any domestic or foreign corporation which has merged, effective prior to ~~March 15~~ *its annual report due date pursuant to subsection C of § 13.1-936* in any year, into a surviving domestic corporation or into a surviving foreign corporation that files with the Commission the certificate of merger prior to such date, shall not be required to pay the registration fee for that year. The Commission shall enter an order withdrawing and cancelling the registration fee assessments above specified remaining unpaid. Registration fee assessments that have been paid shall not be refunded.

§ 13.1-914. Automatic termination of corporate existence.

A. If any domestic corporation fails to file the annual report required by this chapter in a timely manner, the Commission shall mail notice to it of impending termination of its corporate existence. Whether or not such notice is mailed, if the corporation fails to file the annual report before ~~September 1 of the year it is due~~ *the last day of the fourth month immediately following its annual report due date each year*, the corporate existence of such corporation shall automatically cease ~~as of September 1 as of that day~~ and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to collect the assets of the corporation, and pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in accordance with § 13.1-907.

183 B. 1. Any domestic corporation shall pay the annual registration fee required by law on or before
184 ~~April 1 (following the January assessment) the corporation's annual report due date determined in~~
185 ~~accordance with subsection C of § 13.1-936~~ of each year. If the corporation pays the annual registration
186 fee for the year assessed after ~~April 1~~ such date of that year, the corporation shall incur a penalty of ten
187 dollars.

188 2. If any domestic corporation fails to pay by ~~June 1~~ the due date of the year assessed the annual
189 registration fee, the Commission shall mail notice to the corporation of impending termination of its
190 corporate existence. The corporate existence of the corporation shall be automatically terminated if any
191 such fee is unpaid as of ~~September 1~~ the last day of the fourth month immediately following the due
192 date of that year, and its properties and affairs shall pass automatically to its directors as trustees in
193 liquidation. The trustees shall then proceed to collect the assets of the corporation, and pay, satisfy and
194 discharge its liabilities and obligations and do all other acts required to liquidate its business. After
195 paying or adequately providing for the payment of all of its obligations, the trustees shall distribute the
196 remainder of its assets in accordance with § 13.1-907.

197 § 13.1-930. Automatic revocation of certificate of authority.

198 A. If any foreign corporation fails to file the annual report required by this chapter in a timely
199 manner, the Commission shall mail notice to it of impending revocation of its certificate of authority to
200 transact business in this Commonwealth. Whether or not such notice is mailed, if the corporation fails to
201 file the annual report before ~~September 1~~ of the year it is due the last day of the fourth month
202 immediately following its annual report due date each year, the foreign corporation shall automatically
203 cease to be authorized to transact business in this Commonwealth and its certificate of authority shall be
204 automatically revoked as of ~~September 1~~ as of that day.

205 B. 1. Any foreign corporation shall pay the annual registration fee required by law on or before ~~April~~
206 ~~1 (following the January assessment) the corporation's annual report due date determined in accordance~~
207 ~~with subsection C of § 13.1-936~~ of each year. If the corporation pays the annual registration fee for the
208 year assessed after ~~April 1~~ such date of that year, the corporation shall incur a penalty of ten dollars.

209 2. If any foreign corporation fails to pay by ~~June 1~~ the due date of the year assessed the annual
210 registration fee, the Commission shall mail notice to the corporation of impending revocation of its
211 certificate of authority. The corporation shall automatically cease to be authorized to do business in this
212 Commonwealth if any such fee is unpaid as of ~~September 1~~ the last day of the fourth month
213 immediately following the due date of that year, and its certificate of authority shall be automatically
214 revoked.

215 § 13.1-936. Annual report of domestic and foreign corporations.

216 A. Each domestic corporation, and each foreign corporation authorized to transact business in this
217 Commonwealth, shall file, within the time prescribed by this chapter, an annual report setting forth:

218 1. The name of the corporation, the address of its principal office and the state or country under
219 whose laws it is incorporated.

220 2. The address of the registered office of the corporation in this Commonwealth (including both (i)
221 the post-office address with street and number, if any, and (ii) the name of the county or city in which
222 it is located), and the name of its registered agent in this Commonwealth at such address.

223 3. The names and post-office addresses of the directors and the principal officers of the corporation.

224 B. The report shall be made on forms furnished by the Commission, and shall supply the information
225 as of the date of the report.

226 C. ~~The Except as otherwise provided in this subsection, the~~ annual report of a domestic or foreign
227 corporation shall be filed with the Commission ~~between January 1 and April 1 of each year after the~~
228 ~~calendar year in which it was incorporated or authorized to transact business in this Commonwealth by~~
229 ~~the last day of the twelfth month next succeeding the date it was incorporated or authorized to transact~~
230 ~~business in this Commonwealth, and by such date in each year thereafter. The report shall be filed no~~
231 ~~earlier than three months prior to its due date each year.~~ If the report appears to be incomplete or
232 inaccurate, the Commission shall return it for correction or explanation. Otherwise the Commission shall
233 file it in the clerk's office. ~~At the discretion of the Commission the annual report due date for a~~
234 ~~corporation may be extended, on a monthly basis for a period of not less than one month nor more than~~
235 ~~eleven months, at the request of its registered agent of record or as may be necessary to distribute~~
236 ~~annual report due dates of corporations as equally as practicable throughout the year on a monthly~~
237 ~~basis.~~

238 § 13.1-936.1. Annual registration fees for domestic and foreign corporations.

239 A. Every domestic corporation and every foreign corporation authorized to conduct its affairs in this
240 Commonwealth shall pay into the state treasury ~~on or before April 1 in each year after the calendar year~~
241 ~~in which it was incorporated or authorized to transact business in this Commonwealth by its due date~~
242 ~~each calendar year~~ an annual registration fee of twenty-five dollars.

243 The annual registration fee shall be irrespective of any specific license tax or other tax or fee
244 imposed by law upon the corporation for the privilege of conducting its affairs in this Commonwealth or

upon its franchise, property or receipts. Nonstock corporations incorporated before 1970 which were not liable for the annual registration fee therefor shall not be liable for an annual registration fee hereafter.

B. The State Corporation Commission shall ascertain from its records each corporation authorized to conduct its affairs in this Commonwealth, as of ~~January 1 of each year~~ *the first day of the second month next preceding the month of the corporation's annual registration fee due date each year*, and shall assess against each corporation the registration fee herein imposed. *In any year in which a corporation's due date is extended pursuant to this chapter the registration fee assessment shall be increased by a prorated amount to cover the period of extension.* A statement of the assessment, when made, shall be forwarded by the Clerk of the State Corporation Commission, ~~before March 15,~~ to the Comptroller and to each corporation.

C. Any corporation which fails to pay the registration fee herein imposed within the time prescribed shall incur a penalty as provided in subdivision B 1 of § 13.1-914 or § 13.1-930, as the case may be, which shall be added to the amount of the registration fee. The penalty shall be in addition to any other penalty or liability provided by law.

D. The fees paid into the state treasury under this section shall be set aside as a special fund to be used only by the State Corporation Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the Clerk of the Commission, together with all other costs incurred by the Commission in supervising, implementing and administering the provisions of Part 4 (§ 8.9-401 et seq.) of Title 8.9, this title, except for Chapters 5 (§ 13.1-501 et seq.) and 8 (§ 13.1-557 et seq.) and Article 6 (§ 55-142.1 et seq.) of Chapter 6 of Title 55, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal year.

2. That the provisions of this act shall become effective on January 1, 1998.