

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 432

An Act to amend and reenact §§ 13.1-1005, 13.1-1010.1, 13.1-1022, 13.1-1024, 13.1-1039, 13.1-1046, 58.1-1813, and 63.1-325 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 13.1-1011.1 and 13.1-1040.1, and by adding in Article 9 of Chapter 12 of Title 13.1 a section numbered 13.1-1050.1, relating to Limited Liability Company Act.

[H 906]

Approved April 12, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1005, 13.1-1010.1, 13.1-1022, 13.1-1024, 13.1-1039, 13.1-1046, 58.1-1813, and 63.1-325 of the Code of Virginia are amended and reenacted, that the Code of Virginia is amended by adding sections numbered 13.1-1011.1 and 13.1-1040.1, and by adding in Article 9 of Chapter 12 of Title 13.1 a section numbered 13.1-1050.1 as follows:

§ 13.1-1005. Fees.

The Commission shall charge and collect the following fees:

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

- a. Articles of organization.
- b. An application for registration as a foreign limited liability company.
- c. *Articles of reinstatement.*

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

- a. Articles of amendment.
- b. A certificate of cancellation with respect to a domestic or foreign limited liability company.
- c. A certificate of correction referred to in § 13.1-1011.1 or § 13.1-1055.
- d. A copy of an instrument of merger of a foreign limited liability company referred to in

§ 13.1-1060.

e. Articles of merger.

3. For filing any one of the following, the fee shall be \$10:

a. An application to reserve or to renew the reservation of a name for use by a domestic or foreign limited liability company.

b. A notice of the transfer of a name reserved for use by a domestic or a foreign limited liability company.

4. For issuing a certificate pursuant to § 13.1-1067, six dollars for each certificate.

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

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

1. The name of the former partnership or limited partnership; *and*

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

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

B. The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company shall be approved by the partners in the manner provided in the partnership's partnership agreement for amendments to the partnership agreement or, if no such provision is made in a partnership agreement, by all the partners.

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

§ 13.1-1011.1. *Certificate of correction.*

A. A limited liability company may correct its articles of organization at any time to correct a name or address specified in the articles of organization. A certificate of correction shall not be required to be adopted by a vote of the members of the limited liability company.

B. To correct its articles of organization, a limited liability company shall file with the Commission a certificate of correction setting forth:

- 1. The name of the limited liability company; *and*
- 2. The text of each correction.

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

§ 13.1-1022. Management of limited liability company.

A. Except to the extent that the articles of organization or an operating agreement provides in writing for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.

B. Unless otherwise provided in this chapter, in the articles of organization, or in an operating agreement, the members of a limited liability company shall vote in proportion to their contributions to the limited liability company, as adjusted from time to time, and a majority vote of the members of a limited liability company shall consist of the vote or other approval of members having a majority share of the voting power of all members.

C. Unless otherwise provided in this chapter, in the articles of organization, or in an operating agreement, any action required or permitted to be taken by the members of a limited liability company may be taken upon a majority vote of the members.

D. Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company have the power and authority to delegate to one or more other persons the members' rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or the limited liability company, and to delegate by a management agreement or other agreement with, or otherwise to, other persons.

E. Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company may take action permitted or required to be taken by the members without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting. Unless otherwise provided in the articles of organization or an operating agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy.

§ 13.1-1024. Management of a limited liability company by a manager or managers.

A. The articles of organization or an operating agreement of a limited liability company may delegate full or partial responsibility for managing a limited liability company to or among one or more managers.

B. Managers need not be residents of this Commonwealth or members of the limited liability company unless the articles of organization or an operating agreement so require. The articles of organization or an operating agreement may prescribe other qualifications for managers.

C. The number of managers shall be fixed by or in the manner provided in the articles of organization or an operating agreement. The number of managers may be increased or decreased by amendment to, or in the manner provided in, the articles of organization or an operating agreement.

D. Unless otherwise provided in the articles of organization or an operating agreement, managers shall be elected by the members.

E. Unless otherwise provided in the articles of organization or an operating agreement, any vacancy occurring in the office of manager shall be filled by a majority vote of the members.

F. All managers or any lesser number may be removed in the manner provided in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not provide for the removal of managers, then all managers or any lesser number may be removed with or without cause by a majority vote of the members.

G. Unless otherwise provided in the articles of organization or an operating agreement, any action required or permitted to be taken by the managers of a limited liability company may be taken upon a majority vote of the managers.

H. Unless otherwise provided in the articles of organization or an operating agreement, a manager of a limited liability company has the power and authority to delegate to one or more other persons the manager's rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager of the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the articles of organization or an operating agreement, such delegation by a manager of a limited liability company shall not cause the manager to cease to be a manager of the limited liability company.

I. Unless otherwise provided in the articles of organization or an operating agreement, the managers of a limited liability company may take any action permitted or required to be taken by the managers without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting. Unless otherwise provided in the articles of organization or an operating agreement, on any matter that is to be voted on by managers, the managers may vote in person or by proxy.

§ 13.1-1039. Assignment of interest.

Unless otherwise provided in the articles of organization or an operating agreement, a membership interest in a limited liability company is assignable in whole or in part. An assignment of an interest in a limited liability company does not of itself dissolve the limited liability company. An assignment does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights of a member. Such an assignment entitles the assignee to receive, to the extent assigned, only any share of profits and losses and distributions to which the assignor would be entitled. ~~Except as provided in the articles of organization or an operating agreement, a member ceases to be a member upon assignment of his or its entire membership interest.~~

§ 13.1-1040.1. Events causing member's dissociation.

Except as otherwise provided in the articles of organization or an operating agreement, a member is dissociated from a limited liability company upon the occurrence of any of the following events:

- 1. The limited liability company's having notice of the member's express will to resign as a member on a later date specified by the member in the notice or, if no later date is specified, the date of notice;*
- 2. An event agreed to in the articles of organization or an operating agreement as causing the member's dissociation;*
- 3. The member's expulsion pursuant to the articles of organization or an operating agreement;*
- 4. The member's expulsion by the unanimous vote of the other members if:*
 - a. It is unlawful to carry on the business of the limited liability company with that member; or*
 - b. There has been an assignment or transfer of all or substantially all of that member's membership interest, other than a transfer for security purposes or a court order charging the member's interest which, in either case has not been foreclosed;*
- 5. On application by the limited liability company or another member, the member's expulsion by judicial determination because:*
 - a. The member engaged in wrongful conduct that adversely and materially affected the business of the limited liability company;*
 - b. The member willfully or persistently committed a material breach of the articles of organization or an operating agreement; or*
 - c. The member engaged in conduct relating to the business of the limited liability company which makes it not reasonably practicable to carry on the business with the member;*
- 6. The member's:*
 - a. Becoming a debtor in bankruptcy;*
 - b. Executing an assignment for the benefit of creditors;*
 - c. Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that member or of all or substantially all of that member's property; or*
 - d. Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;*
- 7. In the case of a member who is an individual:*
 - a. The member's death;*
 - b. The appointment of a guardian, committee or conservator for the member; or*
 - c. A judicial determination that the member has otherwise become incapable of performing the member's duties under the articles of organization or an operating agreement;*
- 8. In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited liability company, but not merely by reason of the substitution of a successor trustee;*
- 9. In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited liability company, but not merely by reason of the substitution of a successor personal representative;*
- 10. Termination of a member who is not an individual, partnership, corporation, limited liability company, trust, or estate;*
- 11. The expiration of ninety days after the limited liability company notifies a corporate member that it will be expelled because it has filed articles of dissolution or the equivalent, its existence has been terminated or its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, if there is no revocation of the certificate of dissolution or no reinstatement of its existence, its charter or its right to conduct business; or*
- 12. A partnership or limited liability company that is a member has been dissolved and its business is being wound up.*

§ 13.1-1046. Dissolution; generally.

A limited liability company organized under this chapter is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

- 1. At the time or on the happening of any events specified in writing in the articles of organization or an operating agreement;*
- 2. Upon the unanimous written consent of the members;*

3. Except as otherwise provided in writing in the articles of organization or an operating agreement, upon the death, resignation, retirement, expulsion, bankruptcy, or dissolution of a member or occurrence of any other event that terminates the continued membership of a member in the limited liability company, unless within six months after the event the limited liability company is continued by the consent of a majority of the remaining member-managers of a manager-managed limited liability company of which one or more members is a manager or by a majority vote of the remaining members of any other limited liability company. At any time there are no members; however, unless otherwise provided in the articles of organization or an operating agreement, the limited liability company is not dissolved and is not required to be wound up if, within six months or such period as is provided for in the articles of organization or an operating agreement after the occurrence of the event that caused the dissociation of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company until the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that caused the dissociation of the last remaining member;

4. The entry of a decree of judicial dissolution under § 13.1-1047; or

5. Automatic cancellation of its certificate pursuant to § 13.1-1064.

§ 13.1-1050.1. Reinstatement.

A limited liability company that has filed a certificate of cancellation may be relieved of the cancellation and its certificate of organization shall be reinstated by filing articles of reinstatement in the form prescribed by the Commission not later than one year following the date of cancellation, together with a reinstatement fee of \$100 and all registration fees and penalties that were due before the certificate of organization was cancelled or that would have become due had the certificate of organization not been cancelled. If the name of the limited liability company is not available at the time of reinstatement, as a precondition to reinstatement, the articles of reinstatement shall contain an amendment to the articles of organization to change the limited liability company's name. If the limited liability company complies with the provisions of this section, the Commission shall reinstate the certificate of organization of the limited liability company, and the limited liability company shall be deemed not to have had its certificate of organization cancelled. In that event, the reinstated limited liability company shall resume carrying on its business as if neither cancellation nor dissolution had ever occurred, and any liability incurred by that limited liability company or a member, manager or other agent after the cancellation and before the reinstatement is determined as if cancellation had never occurred.

§ 58.1-1813. Liability of corporate officer or employee, or member, manager or employee of partnership or limited liability company, for failure to pay tax, etc.

A. Any corporate officer, partnership or limited liability officer who willfully fails to pay, collect or truthfully account for and pay over any tax administered by the Department of Taxation, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as such taxes are assessed and collected.

B. The term "corporate officer, partnership or limited liability officer" as used in this section means an officer or employee of a corporation, or a member, manager or employee of a partnership or limited liability company, who as such officer, employee, member or manager is under a duty to perform on behalf of the corporation, partnership or limited liability company the act in respect of which the violation occurs and who (1) had knowledge of the failure or attempt as set forth herein and (2) had authority to prevent such failure or attempt.

§ 63.1-325. Donations of professional services.

A. A sole proprietor, partnership or limited liability company engaged in the business of providing professional services shall be eligible for a tax credit under this chapter based on the time spent by the proprietor or a partner or member, respectively, who renders professional services to a program which has received an allocation of tax credits from the Commissioner of Social Services or his designee. The value of the professional services, for purposes of determining the amount of the tax credit allowable, rendered by the proprietor or a partner or member to an approved program shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) \$125 per hour.

B. A business firm shall be eligible for a tax credit under this chapter for the time spent by a salaried employee who renders professional services to an approved program. The value of the professional services, for purposes of determining the amount of tax credit allowed to a business firm for time spent by its salaried employee in rendering professional services to an approved project, shall be equal to the salary that such employee was actually paid for the period of time that such employee rendered professional services to the approved program.

C. Notwithstanding any provision of this chapter limiting eligibility for tax credits to business firms, physicians and dentists licensed pursuant to Title 54.1 who provide health care services within the scope of their licensure, without charge, at a clinic which has received an allocation of tax credits from the Commissioner of Social Services or his designee and is organized in whole or in part for the delivery of

health care services without charge, or to a clinic operated not for profit providing health care services for charges not exceeding those set forth in a scale prescribed by the State Board of Health pursuant to § 32.1-11 for charges to be paid by persons based upon ability to pay, or shall be eligible for a tax credit pursuant to § 63.1-324 based on the time spent in providing health care services at such clinic. The value of such services, for purposes of determining the amount of the tax credit allowable, rendered by the physician or dentist shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) \$125 per hour.