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HOUSE BILL NO. 997

House Amendments in [] — February 1, 2002

A BILL to amend and reenact §§ 13.1-1002, 13.1-1008, 13.1-1022, 13.1-1024, 13.1-1025, 13.1-1028, 13.1-1040.1, and 13.1-1048 of the Code of Virginia, relating to the Virginia Limited Liability Company Act.

Patron Prior to Engrossment—Delegate McDonnell

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1002, 13.1-1008, 13.1-1022, 13.1-1024, 13.1-1025, 13.1-1028, 13.1-1040.1, and 13.1-1048 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-1002. Definitions.

As used in this chapter:

"Articles of organization" means all documents constituting, at any particular time, the articles of organization of a limited liability company. It includes the original articles of organization, the original certificate of organization issued by the Commission, and all amendments to the articles of organization. When the articles of organization have been restated pursuant to any articles of amendment, it includes only the restated articles of organization and any subsequent amendments to the restated articles of organization, but does not include the articles of amendment accompanying the restated articles of organization.

"Bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code.

"Commission" means the State Corporation Commission of Virginia.

"Contribution" means any cash, property or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in his capacity as a member.

"Distribution" means a direct or indirect transfer of money or other property, or incurrence of indebtedness by a limited liability company, to or for the benefit of its members in respect of their interests.

"Domestic corporation" has the same meaning as specified in § 13.1-603.

"Domestic limited partnership" has the same meaning as specified in § 50-73.1.

"Domestic partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under § 50-73.88, or predecessor law of this Commonwealth, and includes, for all purposes of the laws of this Commonwealth, a registered limited liability partnership.

"Electronic transmission" means any form of communication [that constitutes a record, as such term is defined in § 59.1-480, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section] .

"Foreign corporation" has the same meaning as specified in § 13.1-603.

"Foreign limited liability company" means an entity that is an unincorporated association organized under laws other than the laws of this Commonwealth, and that affords to each of its members, pursuant to the laws under which it is organized, limited liability with respect to the liabilities of the entity.

"Foreign limited partnership" has the same meaning as specified in § 50-73.1.

"Foreign partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under the laws of any state or jurisdiction other than this Commonwealth, and includes, for all purposes of the laws of this Commonwealth, a foreign registered limited liability partnership.

"Foreign registered limited liability partnership" has the same meanings as specified in §§ 50-2 and 50-73.79.

"Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association that is organized and existing under this chapter. A limited liability company's status for federal tax purposes shall not affect its status as a distinct entity organized and existing under this chapter.

"Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an

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59 operating agreement.

60 "Manager-managed limited liability company" means a limited liability company that is managed by
61 a manager or managers as provided for in its articles of organization or an operating agreement.

62 "Member" means a person that has been admitted to membership in a limited liability company as
63 provided in § 13.1-1038.1 and that has not ceased to be a member.

64 "Member-managed limited liability company" means a limited liability company that is not a
65 manager-managed limited liability company.

66 "Membership interest" or "interest" means a member's share of the profits and the losses of the
67 limited liability company and the right to receive distributions of the limited liability company's assets.

68 "Non-United States entity" means a foreign limited liability company (other than one formed under
69 the laws of a state), or a corporation, business trust or association, real estate investment trust,
70 common-law trust, or any other unincorporated business, including a partnership, formed, incorporated,
71 organized, created or that otherwise came into being under the laws of any foreign country or other
72 foreign jurisdiction (other than any state).

73 "Operating agreement" means an agreement of the members as to the affairs of a limited liability
74 company and the conduct of its business, or a writing or agreement of a limited liability company with
75 one member that satisfies the requirements of subdivision A 2 of § 13.1-1023.

76 "Person" has the same meaning as specified in § 13.1-603.

77 "Principal office" means the office, in or out of this Commonwealth, where the principal executive
78 offices of a domestic or foreign limited liability company are located.

79 "State," when referring to a part of the United States, includes a state, commonwealth and the
80 District of Columbia, and their agencies and governmental subdivisions; and a territory or insular
81 possession, and their agencies and governmental subdivisions, of the United States.

82 "United States" includes a district, authority, bureau, commission, department and any other agency
83 of the United States.

84 § 13.1-1008. Purposes.

85 Every limited liability company formed under this chapter has the purpose of engaging in any lawful
86 business, *whether or not such business is carried on for profit*, except as otherwise provided by the law
87 of this Commonwealth, unless a more limited purpose is set forth in the articles of organization.

88 § 13.1-1022. Management of limited liability company.

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

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

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

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

106 E. Unless otherwise provided in the articles of organization or an operating agreement, the members
107 of a limited liability company may take action permitted or required to be taken by the members
108 without a meeting, without prior notice and without a vote if a consent or consents in writing, setting
109 forth the action so taken, shall be signed by members having not less than the minimum number of
110 votes that would be necessary to authorize or take such action at a meeting. *A consent transmitted by a*
111 *member by electronic transmission shall be deemed to be signed for the purposes of this section.* Unless
112 otherwise provided in the articles of organization or an operating agreement, on any matter that is to be
113 voted on by members, the members may vote in person or by proxy.

114 § 13.1-1024. Management of a limited liability company by a manager or managers.

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

118 B. Managers need not be residents of this Commonwealth or members of the limited liability
119 company unless the articles of organization or an operating agreement so require. The articles of
120 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. *A consent transmitted by a manager by electronic transmission shall be deemed to be signed for the purposes of this section.* 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, *and any such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law.*

§ 13.1-1025. Limitation of liability of members and managers; exception.

A. In any proceeding brought by or in the right of a limited liability company or brought by or on behalf of members of the limited liability company, the damages assessed against a manager or member arising out of a single transaction, occurrence or course of conduct shall not exceed the lesser of:

1. The monetary amount, including the elimination of liability, specified in writing in the articles of organization or an operating agreement as a limitation on or elimination of the liability of the manager or member; or

2. The greater of (i) \$100,000 or (ii) the amount of cash compensation received by the manager or member from the limited liability company during the twelve months immediately preceding the act or omission for which liability was imposed; *however, the cash compensation of a manager or member shall not be deemed to include amounts constituting distributions for the purposes of § 13.1-1035.*

B. The liability of a manager or member shall not be limited as provided in this section to the extent otherwise provided in writing in the articles of organization or an operating agreement, or if the manager or member engaged in willful misconduct or a knowing violation of the criminal law.

C. No limitation on or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of organization or operating agreement with respect to any act or omission occurring before such amendment.

§ 13.1-1028. Information and records.

A. Each limited liability company shall keep at its principal office the following:

1. A current list of the full name and last known business address of each member, in alphabetical order;

2. A copy of the articles of organization and the certificate of organization, and all articles of amendment and certificates of amendment thereto;

3. Copies of the limited liability company's federal, state and local income tax returns and reports, if any, for the three most recent years;

4. Copies of any then-effective written operating agreement and of any financial statements of the limited liability company for the three most recent years; and

5. Unless contained in a written operating agreement, a writing setting out:

a. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each member and which each member has agreed to contribute;

182 b. The times at which or events on the happening of which any additional contributions agreed to be
183 made by each member are to be made;

184 c. Any right of a member to receive, or of the limited liability company to make, distributions to a
185 member which include a return of all or any part of the member's contribution; and

186 d. Any events upon the happening of which the limited liability company is to be dissolved and its
187 affairs wound up.

188 B. Each member has the right, upon reasonable request ~~and subject to such reasonable standards as~~
189 ~~may be set forth in an operating agreement~~, to:

190 1. Inspect and copy any of the limited liability company records required to be maintained by this
191 section; and

192 2. Obtain from the manager or managers, or if the limited liability company has no manager or
193 managers, from any member or other person with access to such information, from time to time upon
194 reasonable demand (i) true and full information regarding the state of the business and financial
195 condition of the limited liability company, (ii) promptly after becoming available, a copy of the limited
196 liability company's federal, state and local income tax returns for each year, and (iii) other information
197 regarding the affairs of the limited liability company, except to the extent the information demanded is
198 unreasonable or otherwise improper under the circumstances.

199 *C. Notwithstanding the provisions of subsections A and B, the rights of a member to obtain*
200 *information as provided in such subsections may be restricted in writing in an original operating*
201 *agreement or any subsequent written amendment to an operating agreement approved or adopted by all*
202 *of the members and in compliance with any applicable requirements of the operating agreement.*

203 § 13.1-1040.1. Events causing member's dissociation.

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

206 1. ~~The~~ *To the extent resignation of a member is provided for in writing in the articles of*
207 *organization or an operating agreement, the* limited liability company's having notice of the member's
208 express will to resign as a member on a later date specified by the member in the notice or, if no later
209 date is specified, the date of notice;

210 2. An event agreed to in the articles of organization or an operating agreement as causing the
211 member's dissociation;

212 3. The member's expulsion pursuant to the articles of organization or an operating agreement;

213 4. The member's expulsion by the unanimous vote of the other members if:

214 a. It is unlawful to carry on the business of the limited liability company with that member; or

215 b. There has been an assignment or transfer of all or substantially all of that member's membership
216 interest, other than a transfer for security purposes or a court order charging the member's interest
217 which, in either case has not been foreclosed;

218 5. On application by the limited liability company or another member, the member's expulsion by
219 judicial determination because:

220 a. The member engaged in wrongful conduct that adversely and materially affected the business of
221 the limited liability company;

222 b. The member willfully or persistently committed a material breach of the articles of organization or
223 an operating agreement; or

224 c. The member engaged in conduct relating to the business of the limited liability company which
225 makes it not reasonably practicable to carry on the business with the member;

226 6. The member's:

227 a. Becoming a debtor in bankruptcy;

228 b. Executing an assignment for the benefit of creditors;

229 c. Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of
230 that member or of all or substantially all of that member's property; or

231 d. Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a
232 trustee, receiver, or liquidator of the member or of all or substantially all of the member's property
233 obtained without the member's consent or acquiescence, or failing within ninety days after the expiration
234 of a stay to have the appointment vacated;

235 7. In the case of a member who is an individual:

236 a. The member's death;

237 b. The appointment of a guardian, committee or conservator for the member; or

238 c. A judicial determination that the member has otherwise become incapable of performing the
239 member's duties under the articles of organization or an operating agreement;

240 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
241 trust, distribution of the trust's entire transferable interest in the limited liability company, but not merely
242 by reason of the substitution of a successor trustee;

243 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.

§ 13.1-1048. Winding up.

A. Unless otherwise provided in the articles of organization or an operating agreement, upon the dissolution of a limited liability company, the members may wind up the limited liability company's affairs; but the circuit court of the locality in which the registered office of the limited liability company is located, on cause shown, may wind up the limited liability company's affairs on application of any member, his legal representative, or assignee, *and in connection therewith, may appoint one or more liquidating trustees.*

B. *Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in § 13.1-1050, the liquidating trustees, in the name and on behalf of the limited liability company, may (i) prosecute and defend suits, whether civil, criminal or administrative, (ii) wind up the limited liability company's business, (iii) dispose of and convey the limited liability company's property, (iv) discharge or make reasonable provision for the limited liability company's liabilities, and (v) distribute to the members any remaining assets of the limited liability company, all without affecting the liability of members.*

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