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SENATE BILL NO. 477

Offered January 11, 2006

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A BILL to amend and reenact §§ 13.1-1003, 13.1-1005, 13.1-1010, 13.1-1011, 13.1-1011.1, 13.1-1014, 13.1-1014.1, 13.1-1038.1, 13.1-1048, 13.1-1050, and 13.1-1062 of the Code of Virginia, relating to limited liability companies; organization and cancellation.

Patron—Colgan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-1003, 13.1-1005, 13.1-1010, 13.1-1011, 13.1-1011.1, 13.1-1014, 13.1-1014.1, 13.1-1038.1, 13.1-1048, 13.1-1050, and 13.1-1062 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-1003. Filing requirements.

A. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to be filed with the Commission.

B. The document shall be one that this chapter requires or permits to be filed with the Commission.

C. The document shall contain the information required by this chapter. It may contain other information as well.

D. The document shall be typewritten or printed *or, if electronically transmitted, shall be in a format that can be retrieved or reproduced in typewritten or printed form*. The typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be filed. In every case, information in the document shall be legible and the document shall be capable of being reformatted and reproduced in copies of archival quality.

E. The document shall be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals. The articles of organization, duly authenticated by the official having custody of the applicable records in the state or country under whose law the limited liability company is formed, which are required of foreign limited liability companies, need not be in English if accompanied by a reasonably authenticated English translation.

F. The document shall be executed in the name of the limited liability company:

1. By any manager or other person who has been delegated the right and power to manage the business and affairs of the limited liability company, or if no managers or such other persons have been selected, by any member of the limited liability company;

2. If the limited liability company has not been formed, or has been formed without any *managers or* members and no members have been admitted, by ~~one or more of the persons forming or who formed the limited liability company~~ *an organizer*; or

3. If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

G. The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. Any signature may be a facsimile.

H. If, pursuant to any provision of this chapter, the Commission has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

I. The document shall be delivered to the Commission for filing and shall be accompanied by the required filing fee and any registration fee required by this chapter.

J. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § 59.1-496.

§ 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.

d. Articles of entity conversion.

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

a. Articles of amendment.

b. ~~A~~ *Articles of cancellation with respect to a domestic limited liability company or a certificate of*

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SB477

59 cancellation with respect to a ~~domestic or~~ foreign limited liability company.

60 c. Articles of correction referred to in § 13.1-1011.1 or a certificate of correction referred to in
61 § 13.1-1055.

62 d. A copy of an instrument of merger of a foreign limited liability company referred to in
63 § 13.1-1060.

64 e. Articles of merger.

65 f. A copy of an instrument of entity conversion of a foreign limited liability company holding a
66 certificate of registration to transact business in the Commonwealth.

67 g. Articles of restatement.

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

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

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

73 4. For issuing a certificate pursuant to § 13.1-1067, \$6 for each certificate.

74 § 13.1-1010. Organizers.

75 One or more persons may ~~form~~ *act as organizers of* a limited liability company by signing and filing
76 articles of organization with the Commission. Such person or persons need not be members of the
77 limited liability company after formation has occurred.

78 § 13.1-1011. Articles of organization.

79 A. The articles of organization shall set forth:

80 1. A name for the limited liability company that satisfies the requirements of § 13.1-1012;

81 2. The post office address, including the street and number, if any, of the limited liability company's
82 initial registered office, the name of the city or county in which it is located, the name of its initial
83 registered agent at that office, and that the agent is either (i) an individual who is a resident of Virginia
84 and either a member or manager of the limited liability company, a member or manager of a limited
85 liability company that is a member or manager of the limited liability company, an officer or director of
86 a corporation that is a member or manager of the limited liability company, a general partner of a
87 general or limited partnership that is a member or manager of the limited liability company, a trustee of
88 a trust that is a member or manager of the limited liability company, or a member of the Virginia State
89 Bar or (ii) a domestic or foreign stock or nonstock corporation, limited liability company or registered
90 limited liability partnership authorized to transact business in the Commonwealth; and

91 3. The post office address, including the street and number, if any, of the principal office of the
92 limited liability company, which may be the same as the registered office, but need not be within the
93 Commonwealth.

94 B. The articles of organization may set forth any other matter that under this chapter is permitted to
95 be set forth in an operating agreement of a limited liability company.

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

97 *D. If the Commission finds that the articles of organization comply with the requirements of law and*
98 *that all required fees have been paid, it shall issue a certificate of organization.*

99 § 13.1-1011.1. Articles of correction.

100 A. A limited liability company may correct its articles of organization at any time to correct a name
101 or address specified in the articles of organization *that was inadvertently or improperly set forth.*

102 B. For a correction to the articles of organization of a limited liability company to be adopted, the
103 correction shall be adopted by a majority vote of the managers, provided that if the limited liability
104 company has been formed without any managers and no managers have been appointed, the correction
105 may be adopted by a majority vote of the members entitled to vote thereon, unless the articles of
106 organization require a greater vote, provided that if the limited liability company has been formed
107 without any managers or members and no members have been admitted, a correction may be adopted by
108 a majority vote of the ~~persons who formed~~ *organizers of* the limited liability company ~~under~~
109 ~~§ 13.1-1010.~~

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

112 1. The name of the limited liability company;

113 2. The text of each correction;

114 3. A statement of the nature of the error necessitating each correction; and

115 4. A statement of the manner in which the correction was adopted.

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

118 § 13.1-1014. Amendment of articles of organization.

119 A. A limited liability company may amend its articles of organization at any time to add or change a
120 provision that is required or permitted in the articles, or to delete a provision not required in the articles.

B. For an amendment to the articles of organization of a limited liability company to be adopted, the amendment shall be approved, unless the articles of organization require a greater vote, by a majority vote of the members entitled to vote thereon, provided that if the limited liability company has been formed without any members and no members have been admitted, an amendment may be adopted by a majority of the persons named as a manager in the articles of organization or, if there are no members or managers, by a majority of the persons who formed organizers of the limited liability company under § 13.1-1010.

C. To amend its articles of organization, a limited liability company shall file with the Commission articles of amendment setting forth:

1. The name of the limited liability company;
2. The text of each amendment adopted;
3. The date of each amendment's adoption; and
4. A statement that the amendment was adopted by a vote of the members, by the managers or by the persons who formed the limited liability company in accordance with this chapter.

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

D. An amendment to articles of organization does not affect a cause of action existing against or in favor of the limited liability company, a proceeding to which the limited liability company is a party, or the existing rights of persons other than members of the limited liability company. An amendment changing a limited liability company's name does not abate a proceeding brought by or against the limited liability company in its former name.

E. A member of a limited liability company does not have a vested property right resulting from any provision of the articles of organization.

§ 13.1-1014.1. Restatement of articles of organization.

A. A limited liability company may restate its articles of organization at any time.

B. The restatement may include one or more amendments to the articles of organization.

C. For a restatement of the articles of organization of a limited liability company to be adopted, the restatement shall be approved, unless the articles of organization require a greater vote, by a majority vote of the members entitled to vote thereon, provided that if the limited liability company has been formed without any members and no members have been admitted, a restatement may be adopted by a majority of the persons named as a manager in the articles of organization or, if there are no members or managers, by a majority of the persons who formed organizers of the limited liability company under § 13.1-1010.

D. A limited liability company restating its articles of organization shall file with the Commission articles of restatement setting forth the name of the limited liability company and the text of the restated articles of organization together with a certificate setting forth:

1. The name of the limited liability company immediately prior to restatement;
2. The date of adoption of the restated articles of organization;
3. Whether the restatement contains an amendment or amendments to the articles of organization;

and

4. A statement that the restatement was adopted by a vote of the members, by the managers or by the persons who formed the limited liability company in accordance with this chapter.

E. If the Commission finds that the articles of restatement comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of restatement is effective, the restated articles of organization supersede the original articles of organization and all amendments to the original articles of organization.

F. The Commission may certify restated articles of organization as the articles of organization currently in effect without including the information set forth in the certificate required by subsection D.

§ 13.1-1038.1. Admission of members.

A. Subject to subsection B, a person may become a member in a limited liability company:

1. In the case of a person acquiring a membership interest directly from the limited liability company, upon compliance with an operating agreement or, if the operating agreement does not so provide, upon the consent of a majority of the managers of a manager-managed limited liability company or a majority vote of the members of a member-managed limited liability company;

2. In the case of an assignee of a membership interest, as provided in subsection A of § 13.1-1040;

3. In the case of a limited liability company that has no members as of the commencement of its existence under § 13.1-1004, as provided in any writing signed by both the initial member or members and the person who formed the limited liability company under § 13.1-1010 managers, if any are designated in the articles of organization, or, if no managers are so designated, the organizers; and

4. In the case of a limited liability company the last remaining member of which has dissociated, (i) as provided in a writing executed by the successor in interest of that member, who may provide for the

admission of the successor in interest 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, provided that the articles of organization or an operating agreement may provide that the successor in interest of the last remaining member shall be obligated to agree in writing to the admission of the successor in interest of that 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, or (ii) in the manner provided for in the articles of organization or an operating agreement, effective as of the occurrence of the event that caused the dissociation of the last remaining member, pursuant to a provision of the articles of organization or an operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company.

B. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or
2. The time provided in an operating agreement or, if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

C. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a membership interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in the articles of organization or an operating agreement:

1. A person may be admitted to a limited liability company as a member of the limited liability company without acquiring a membership interest in the limited liability company; and
2. A person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a membership interest in the limited liability company.

§ 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~~ *effective date* of a certificate of cancellation as ~~provided in~~ *issued pursuant to* § 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 and without imposing the liability of a general partner on a liquidating trustee.

§ 13.1-1050. Articles of cancellation.

A. ~~Upon the completion of winding up of the~~ *When the affairs of a* limited liability company; a ~~certificate have been wound up, it shall file articles of cancellation shall be filed~~ with the Commission. The winding up of a limited liability company shall be completed when all debts, liabilities, and obligations of the limited liability company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the limited liability company have been distributed to the members. ~~A certificate of cancellation~~ *The articles shall set forth:*

1. The name of the limited liability company;
2. The date of filing of the articles of organization and each amendment thereto;
3. The reason for filing the ~~certificate~~ *articles* of cancellation;
4. ~~The effective date (which shall be a date certain) of cancellation if it is not to be effective on the filing of the certificate of cancellation, provided that any effective date other than the date of filing the certificate of cancellation must be a date subsequent to the filing~~ *A statement that the limited liability company has completed the winding up of its affairs; and*
5. Any other information the members determine to include therein.

B. Unless otherwise provided in this chapter or in the certificate, a certificate of cancellation (or a judicial decree of cancellation) is effective when ~~accepted for filing by~~ *If the Commission finds that the articles of cancellation comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of cancellation, canceling the limited liability company's certificate of organization. Upon the effective date of such certificate, the existence of the limited liability company shall cease, except for the purpose of suits, other proceedings, and appropriate actions by members as provided in this chapter.*

§ 13.1-1062. Annual registration fees to be paid by domestic and foreign limited liability companies.

244 A. Every domestic limited liability company, and every foreign limited liability company registered
245 to transact business in this Commonwealth, shall pay into the state treasury on or before ~~September~~
246 *October* 1 in each year after the calendar year in which it was formed or registered to transact business
247 in this Commonwealth an annual registration fee of \$50; provided that the initial annual registration fee
248 to be paid by a domestic limited liability company created by conversion shall be due in the year after
249 the calendar year in which it converted.

250 B. The fees paid into the state treasury under this section and the fees collected under § 13.1-1005
251 shall be set aside and paid into the special fund created under § 13.1-775.1, and shall be used only by
252 the Commission as it deems necessary to defray the costs of the Commission and of the office of the
253 clerk of the Commission in supervising, implementing, administering and enforcing the provisions of
254 this chapter. The projected excess of fees collected over the costs of administration and enforcement so
255 incurred shall be paid into the general fund prior to the close of each fiscal year, based on the
256 unexpended balance of the special fund at the end of the prior fiscal year. An adjustment of this transfer
257 amount to reflect actual fees collected shall occur during the first quarter of the succeeding fiscal year.