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SENATE BILL NO. 1328

Offered January 14, 2009

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A *BILL to amend and reenact §§ 50-73.83, 50-73.132, 50-73.134, 50-73.135, 50-73.136, 50-73.137:1, and 50-73.138 of the Code of Virginia, relating to limited liability partnerships; cancellation and restoration of status.*

Patron—McEachin

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 50-73.83, 50-73.132, 50-73.134, 50-73.135, 50-73.136, 50-73.137:1, and 50-73.138 of the Code of Virginia are amended and reenacted as follows:

§ 50-73.83. Execution, filing, and recording of statements; refunds.

A. A statement may be filed with the Commission. A duly authenticated copy of a statement that is filed in an office in another state may be filed with the Commission. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in the Commonwealth.

B. A duly authenticated copy of a statement that has been filed with the Commission and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a duly authenticated copy of a statement filed with the Commission does not have the effect provided for recorded statements in this chapter.

C. A statement filed by a partnership shall be executed by at least two partners, except as provided in subdivision A 1 of § 50-73.78. Other statements shall be executed by a partner or other person authorized by this chapter. The person executing a statement shall sign it and state beneath or opposite his signature his name and the capacity in which he executes the document. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate. Any person may execute a statement by an attorney-in-fact.

D. A person authorized by this chapter to file a statement may:

1. Amend or cancel the statement by filing an amendment or cancellation that names the partnership, states the identification number issued by the Commission to the partnership, identifies the statement, and states the substance of the amendment or cancellation; and

2. Renew a statement of partnership authority by filing during the 90-day period preceding the date of the statement's cancellation by operation of law, a renewal of a statement of partnership authority that names the partnership, states the identification number issued by the Commission to the partnership, states the partnership's desire to renew the statement of partnership authority, and states that all of the information set forth in the statement of partnership authority is true and correct as of the execution date of the renewal.

E. A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

F. The fees paid into the state treasury under this section shall be set aside and paid into the special fund created under § 13.1-775.1, subject to that section. The Commission shall have the authority to certify to the Comptroller directing refund of any overpayment of a fee or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment. The Commission shall charge and collect the following fees:

1. The fee shall be \$100 for *filing* any one of the following:

- a. ~~For filing~~ a A statement of registration as a registered limited liability partnership; *or*
- b. ~~For filing~~ a A statement of registration as a foreign registered limited liability partnership; ~~or~~
- c. ~~For restoration of status pursuant to subdivision E 1 of § 50-73.134.~~

2. The fee shall be \$50 for filing an annual continuation report pursuant to § 50-73.134.

3. The fee shall be \$25 for filing any one of the following:

- a. An amendment to a statement of registration as a registered limited liability partnership;
- b. An amendment to a statement of registration as a foreign registered limited liability partnership; *or*
- c. A statement of partnership authority or any other statement or an amendment thereto or cancellation thereof, or a renewal of a statement of partnership authority.

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59 4. For issuing a certificate pursuant to § 50-73.150, the fee shall be \$6.

60 The court responsible for recording transfers of real property may collect a fee for recording a
61 statement.

62 G. The Commission may provide forms for statements and reports.

63 H. Any statement filed with the Commission under this chapter shall be typewritten or printed. The
64 typewritten or printed portion shall be in black. Photocopies, or other reproduced copies, of typewritten
65 or printed statements may be filed. In every case, information in the statement shall be legible and the
66 document shall be capable of being reformatted and reproduced in copies of archival quality. The
67 statement shall be in the English language. A partnership name need not be in English if written in
68 English letters or Arabic or Roman numerals. Any signature on a statement may be a facsimile.

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

72 J. A statement shall be effective at the time of the filing of the statement with the Commission as set
73 forth in this section unless the statement states that it shall become effective at a later time and date
74 specified in the statement. In that event, the statement shall become effective at the earlier of the time
75 and date so specified or 11:59 p.m. on the fifteenth day after the date on which the statement is filed
76 with the Commission.

77 K. Notwithstanding the terms of subsection J, any statement that has a delayed effective time and
78 date shall not become effective if, prior to the effective time and date, the parties to which the statement
79 relates file a written notice of abandonment with the Commission.

80 § 50-73.132. Registered limited liability partnerships.

81 A. To become a registered limited liability partnership, a partnership formed under the laws of the
82 Commonwealth shall file with the Commission a statement of registration as a registered limited liability
83 partnership stating:

84 1. The name of the partnership that satisfies the requirements of § 50-73.133;

85 2. If the partnership is of record with the Commission, the identification number issued by the
86 Commission to the partnership;

87 3. The address, including the street and number, if any, of its principal office (which may, but need
88 not be, located within the Commonwealth);

89 4. The post office address, including the street and number, if any, of its initial registered office,
90 which in the case of a limited partnership formed pursuant to Chapter 2.1 (§ 50-73.1 et seq.) of this title
91 shall be identical to the limited partnership's registered office address on record with the Commission;

92 5. The name of the city or county in which the registered office is located;

93 6. The name of its initial registered agent at that office, which in the case of a limited partnership
94 formed pursuant to Chapter 2.1 (§ 50-73.1 et seq.) of this title shall be identical to the limited
95 partnership's registered agent on record with the Commission, and that the agent is either (i) an
96 individual who is a resident of Virginia and is either a general partner of the registered limited liability
97 partnership, an officer or director of a corporate general partner of the registered limited liability
98 partnership, a general partner of a general partner of the registered limited liability partnership, a
99 member or manager of a limited liability company that is a general partner of the registered limited
100 liability partnership, a trustee of a trust that is a general partner of the registered limited liability
101 partnership, or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock
102 corporation, limited liability company, or registered limited liability partnership authorized to transact
103 business in this Commonwealth;

104 7. Any other matters that the partnership determines to include; and

105 8. The manner in which the registration was approved by the partners.

106 A partnership becomes a registered limited liability partnership at the time of the filing of the initial
107 statement of registration with the Commission or at any later date or time specified in the statement of
108 registration as provided in subsection J of § 50-73.83.

109 B. The Commission shall register as a registered limited liability partnership any partnership that
110 submits a completed statement of registration with the required fee.

111 C. The registration of a partnership as a registered limited liability partnership shall be approved by
112 the partners in the manner provided in the partnership's partnership agreement for amendments to the
113 partnership agreement or, if no provision is made in the partnership agreement, by all of the partners.

114 D. A partnership that has registered shall continue to be a registered limited liability partnership
115 until:

116 1. Its registration is ~~revoked~~ *canceled* pursuant to subsection C of § 50-73.134; or

117 2. ~~The partnership or limited partnership files with the Commission a statement of cancellation of~~
118 ~~registration under, subsection F of § 50-73.135, § 50-73.137, or § 50-73.137:1.~~

119 E. A partnership that has been registered as a registered limited liability partnership under this
120 chapter is, for all purposes, the same entity that existed before it registered.

§ 50-73.134. Registered limited liability partnership annual continuation reports.

A. On or before July 1 of each year after the calendar year in which it became registered under § 50-73.132, each registered limited liability partnership and each foreign registered limited liability partnership authorized to transact business in this Commonwealth shall file an annual continuation report with the Commission setting forth the name of the partnership, the partnership's current principal office address and, if a foreign registered limited liability partnership, the jurisdiction in which it is registered as a registered limited liability partnership. If the report appears to be incomplete or inaccurate, the Commission shall return it for correction or explanation. Otherwise, it shall be deemed filed in the office of the clerk of the Commission. The report shall be made on forms furnished by the Commission and shall be forwarded by the clerk of the Commission, before June 1, to each registered limited liability partnership.

B. The information required shall be given as of the date of the execution of the report, and it shall be executed by a partner in the registered limited liability partnership or foreign registered limited liability partnership or, if a receiver or trustee has been appointed for the partnership, by the receiver or trustee on behalf of the registered limited liability partnership or foreign registered limited liability partnership. The report shall be accompanied by the fee prescribed in subdivision F 2 of § 50-73.83.

C. If any registered limited liability partnership or foreign registered limited liability partnership has failed to pay the fee or to file any report required by this section on or before September 1 of the year due, the Commission shall mail notice by first-class mail to the partnership of the impending revocation cancellation of its registration. Whether or not such notice is mailed, if the partnership fails to file the report or pay the fee on or before November 1 of the year it is due, the registration of the partnership shall be automatically revoked canceled and the partnership shall automatically cease to be a registered limited liability partnership or foreign registered limited liability partnership as of November 1, but shall continue to be a partnership or limited partnership, as the case may be, under this title.

D. Any partnership formed under the laws of the Commonwealth that has ceased to be a registered limited liability partnership under subsection C shall not be considered to have dissolved as a result of ceasing to be a registered limited liability partnership.

E. A registered limited liability partnership or foreign registered limited liability partnership that has ceased to be a registered limited liability partnership or a foreign registered limited liability partnership, as the case may be, under subsection C, subsection F of § 50-73.135, § 50-73.137, § 50-73.137:1, or § 50-73.139, as the case may be, may restore apply to the Commission to have its status as a registered limited liability partnership or foreign registered limited liability partnership restored within five years of the date on which its status as such ceased by was canceled. To have its status restored, a registered limited liability partnership or foreign registered limited liability partnership shall provide the Commission with the following:

1. An application for restoration signed by a partner of a partnership or a general partner of a limited partnership, as the case may be;

Paying a 2. A restoration fee prescribed in subdivision F 1 e of § 50-73.83 of \$100;

2. Making and delivering an 3. An annual continuation report and paying payment of the fee due upon filing the annual continuation report for the year in which it is to be restored restoration is sought, unless the report previously was filed;

3. Paying an amount equal to all 4. All fees that were due before cessation of registered its status as a registered limited liability partnership or foreign registered limited liability partnership was canceled and that would have become due thereafter for the filing of its annual continuation reports for registered limited liability partnerships if cessation of its status had not occurred been canceled; and

4. Filing any 5. Any amendment to its statement of registration with the Commission as required by subsection D of § 50-73.136; and

6. If the registered limited liability partnership's or foreign registered limited liability partnership's registered agent has filed a certificate of resignation and a new registered agent has not been appointed, a certificate of change pursuant to § 50-73.135.

F. A registered limited liability partnership or foreign registered limited liability partnership that has ceased to be a registered limited liability partnership or foreign registered limited liability partnership under this section, subsection F of § 50-73.135, § 50-73.137, § 50-73.137:1, or § 50-73.139 that restores its status as a registered limited liability partnership or foreign registered limited liability partnership shall be deemed not to have lost its status as a registered limited liability partnership or foreign registered limited liability partnership under this article.

G. The Commission shall not file with respect to any domestic or foreign registered limited liability partnership any statement referred to in this chapter until all annual continuation reports required to be filed with the Commission under this article have been filed.

§ 50-73.135. Registered office and registered agent.

A. Each registered limited liability partnership and each foreign registered limited liability partnership

182 registered pursuant to this article shall continuously maintain in this Commonwealth:

183 1. A registered office that may be the same as any of its places of business; and

184 2. A registered agent who shall be either:

185 a. An individual who is a resident of this Commonwealth and is either (i) a general partner of the
186 registered limited liability partnership, (ii) an officer or director of a corporate general partner of the
187 registered limited liability partnership, (iii) a general partner of a general partner of the registered limited
188 liability partnership, (iv) a member or manager of a limited liability company that is a general partner of
189 the registered limited liability partnership, (v) a trustee of a trust that is a general partner of the
190 registered limited liability partnership, or (vi) a member of the Virginia State Bar, and whose business
191 office is identical with the registered office; or

192 b. A domestic or foreign stock or nonstock corporation, limited liability company or registered
193 limited liability partnership authorized to transact business in this Commonwealth, the business office of
194 which is identical with the registered office; provided such a registered agent (i) shall not be its own
195 registered agent and (ii) shall designate by instrument in writing, acknowledged before a notary public,
196 one or more natural persons at the office of the registered agent upon whom any process, notice or
197 demand may be served and shall continuously maintain at least one such person at that office. Whenever
198 any such person accepts service, a photographic copy of such instrument shall be attached to the return.

199 B. The registered agent of a registered limited liability partnership or foreign registered limited
200 liability partnership is the partnership's agent for service of process, notice, or demand required or
201 permitted by law to be served on the partnership. The sole duty of the registered agent is to forward to
202 the registered limited liability partnership or foreign registered limited liability partnership at its last
203 known address any process, notice or demand that is served on the registered agent.

204 C. A registered limited liability partnership or a foreign registered limited liability partnership may
205 change its registered agent or the address of its registered office, or both, upon filing with the
206 Commission a certificate of change on a form supplied by the Commission that sets forth:

207 1. The name of the partnership;

208 2. The address of its current registered office;

209 3. If the current address of its registered office is to be changed, the post-office address, including
210 the street and number, if any, of the new address of its registered office, and the name of the city or
211 county in which it is located;

212 4. The name of its current registered agent;

213 5. If the current registered agent is to be changed, the name of the new registered agent; and

214 6. That after the change or changes are made, the partnership will be in compliance with the
215 requirements of this section.

216 D. Whenever its registered agent dies, resigns or ceases to satisfy the requirements of subsection A
217 of this section, a registered limited liability partnership or foreign registered limited liability partnership
218 shall promptly execute and file with the Commission a certificate of change.

219 E. If (i) the business address of a registered agent changes to another place within this
220 Commonwealth, (ii) the name of a registered agent changes, or (iii) a registered agent merges into an
221 entity that is qualified to serve as a registered agent pursuant to subsection A of this section, the
222 registered agent or surviving entity shall forthwith file a certificate of change as required in subsection
223 D, except that it need be signed, either manually or in facsimile, only by the registered agent or the
224 surviving entity and shall recite that a copy of the certificate has been mailed to the partnership on
225 whose behalf it is to be filed at its principal office.

226 F. A registered agent may resign his agency appointment by signing and filing with the Commission
227 a certificate of resignation accompanied by his certification that he has mailed a copy thereof by
228 certified mail to the address of the principal office of the partnership set forth in the statement of
229 registration for the registered limited liability partnership or foreign registered limited liability
230 partnership. The agency appointment is terminated on the thirty-first day after the date on which the
231 certificate was filed. *If any registered limited liability partnership or foreign registered limited liability*
232 *partnership whose registered agent has filed with the Commission a certificate of resignation fails to file*
233 *a certificate of change pursuant to subsection C within 31 days after the date on which the certificate of*
234 *resignation was filed, the Commission shall mail notice to the registered limited liability partnership or*
235 *foreign registered limited liability partnership of the impending cancellation of its status as a registered*
236 *limited liability partnership. If the registered limited liability partnership or foreign registered limited*
237 *liability partnership fails to file a certificate of change on or before the last day of the second month*
238 *immediately following the month in which the impending cancellation notice was mailed, the registered*
239 *limited liability partnership's or foreign registered limited liability partnership's status as a registered*
240 *limited liability partnership shall be automatically canceled as of that day.*

241 G. Whenever a registered limited liability partnership or a foreign registered limited liability
242 partnership fails to appoint or maintain a registered agent in this Commonwealth or whenever its
243 registered agent cannot with reasonable diligence be found at his address, the clerk of the Commission

shall be the agent of the partnership upon whom service may be made in accordance with § 12.1-19.1.

H. This section does not prescribe the only means, or necessarily the required means, of serving a registered limited liability partnership or a foreign registered limited liability partnership.

§ 50-73.136. Amendment of statement of registration; effect of statement of registration.

A. Notwithstanding the provisions of subsection D or any other provision of this chapter, the status of a partnership as a registered limited liability partnership or a foreign registered limited liability partnership, and the liability of the partners thereof, shall not be affected by (i) errors in the information stated in the statement of registration, if the statement was filed in good faith, or (ii) changes after the filing of a statement of registration in the information stated in the statement.

B. A statement of registration or any amendment thereto may also serve as a statement of partnership authority under § 50-73.93, a statement of denial under § 50-73.94, a statement of dissociation under § 50-73.115, or a statement of dissolution under § 50-73.121 if (i) the title of the statement indicates each purpose for which it is filed and (ii) if the statement of registration otherwise meets the requirements of the particular other statement and, to the extent that it serves as such an other statement, it may be amended, canceled or limited, in accordance with §§ 50-73.93, 50-73.94, 50-73.115 and 50-73.121, but any amendment, cancellation or limitation shall not affect the validity of the statement of registration of the partnership as a registered limited liability partnership, which may be amended only as provided in § 50-73.136 or canceled in accordance with § 50-73.137 or 50-73.139.

C. The filing of a statement of registration shall be conclusive as to third parties, and it shall be incontestable by third parties that all conditions precedent to registration as a registered limited liability partnership or foreign registered limited liability partnership have been met.

D. A statement of registration for a registered limited liability partnership or foreign limited liability partnership is amended by filing an amendment thereto with the Commission. The amendment shall set forth: the name of the registered limited liability partnership or foreign registered limited liability partnership, the date of filing of the initial statement of registration; in the case of a foreign registered limited liability partnership, the jurisdiction in which it is registered as a limited liability partnership; and the amendment to the statement of registration. An amendment to the statement of registration shall be filed by a registered limited liability partnership or foreign registered limited liability partnership not later than thirty days after (i) a change in the name of the partnership or (ii) the partnership has knowledge that a material statement in the statement of registration was false or inaccurate when made or that any facts described therein have changed, making the statement of registration inaccurate in any material respect. An amendment to the statement of registration may be filed for any other proper purpose. Unless otherwise provided in this chapter or in the amendment to the statement of registration, an amendment to a statement of registration shall be effective at the time of its filing with the Commission.

§ 50-73.137:1. Effect of cancellation of limited partnership certificate or registration.

A. Whenever the certificate of limited partnership of a domestic limited partnership that is registered as a registered limited liability partnership is canceled, the limited partnership's registration as a registered limited liability partnership shall thereupon be automatically ~~revoked~~ *canceled* unless the ~~cancellation certificate of limited partnership was canceled~~ pursuant to a conversion to a partnership under § 50-73.126.

B. Whenever the certificate of registration to transact business in this Commonwealth of a foreign limited partnership that is registered as a foreign registered limited liability partnership is canceled, the foreign limited partnership's registration as a foreign registered limited liability partnership shall thereupon be automatically ~~revoked~~ *canceled*.

C. A registered limited liability partnership or foreign registered limited liability partnership that has ceased to be a registered limited liability partnership or a foreign registered limited liability partnership under subsection A or B may restore its status as such by complying with the requirements of subsection E of § 50-73.134.

D. A registered limited liability partnership or foreign registered limited liability partnership that has ceased to be a registered limited liability partnership or foreign registered limited liability partnership under this section that restores its status as a registered limited liability partnership or foreign registered limited liability partnership within five years after the date on which its status as such has ceased shall be deemed not to have lost its status as a registered limited liability partnership or foreign registered limited liability partnership under this section.

§ 50-73.138. Registration of foreign registered limited liability partnerships.

A. Before transacting business in the Commonwealth, a foreign registered limited liability partnership shall register with the Commission. An applicant for registration as a foreign registered limited liability partnership shall file with the Commission a certificate of status from the filing office in the jurisdiction in which the foreign registered limited liability partnership is registered and a statement of registration as a foreign limited liability partnership setting forth the information described in subsection B.

305 B. A statement of registration as a foreign registered limited liability partnership shall set forth the
306 following:

307 1. The name of the foreign registered limited liability partnership and, if the name of the foreign
308 registered limited liability partnership does not comply with § 50-73.133, a designated name for use in
309 the Commonwealth that satisfies the requirements of § 50-73.133;

310 2. The name of the state or other jurisdiction under whose law it is formed and registered as a
311 limited liability partnership, and if the registered limited liability partnership was previously authorized
312 or registered to transact business in the Commonwealth as a foreign corporation, limited liability
313 company, business trust, limited partnership, or registered limited liability partnership, with respect to
314 every such prior authorization or registration, (i) the name of the entity; (ii) the entity type; (iii) the state
315 or other jurisdiction of incorporation, organization or formation; and (iv) the entity identification number
316 issued to it by the Commission;

317 3. If the partnership is of record with the Commission, the identification number issued by the
318 Commission to the partnership;

319 4. The address, including the street and number, if any, of its principal office;

320 5. The post office address, including the street and number, if any, of its initial registered office,
321 which in the case of a foreign limited partnership registered pursuant to Chapter 2.1 (§ 50-73.1 et seq.)
322 of this title shall be identical to the foreign limited partnership's registered office address on record with
323 the Commission;

324 6. The name of the city or county in which the registered office is located;

325 7. The name of its initial registered agent at that office, which in the case of a foreign limited
326 partnership registered pursuant to Chapter 2.1 (§ 50-73.1 et seq.) of this title shall be identical to the
327 foreign limited partnership's registered agent on record with the Commission, and that the agent is either
328 (i) an individual who is a resident of Virginia and is either a general partner of the registered limited
329 liability partnership, an officer or director of a corporate general partner of the registered limited liability
330 partnership, a general partner of a general partner of the registered limited liability partnership, a
331 member or manager of a limited liability company that is a general partner of the registered limited
332 liability partnership, a trustee of a trust that is a general partner of the registered limited liability
333 partnership, or a member of the Virginia State Bar or (ii) a domestic or foreign stock or nonstock
334 corporation, limited liability company, or registered limited liability partnership authorized to transact
335 business in the Commonwealth; and

336 8. That the partnership thereby applies for status as a foreign registered limited liability partnership.

337 C. The Commission shall register as a foreign registered limited liability partnership any partnership
338 that submits a completed statement of registration with the required fee.

339 D. ~~Registration as~~ *The registration of* a foreign registered limited liability partnership is effective
340 *shall continue* until:

341 ~~1. The its~~ registration is ~~revoked~~ *canceled* pursuant to subsection C of § 50-73.134;

342 ~~2. The partnership files with the Commission a statement of cancellation of registration under~~
343 ~~§ 50-73.139; or~~

344 ~~3. The registration is revoked pursuant to subsection B of, subsection F of § 50-73.135,~~
345 ~~§ 50-73.137:1, or § 50-73.139.~~