

11102336D

SENATE BILL NO. 1356

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend and reenact § 13.1-1042 of the Code of Virginia, relating to limited liability companies; derivative proceedings.

Patron—Stosch

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 13.1-1042 of the Code of Virginia is amended and reenacted as follows:

§ 13.1-1042. Right of action; standing; condition precedent; stay of proceeding.

A. A member may bring an action in the right of a limited liability company to recover a judgment in its favor to the same extent that a shareholder may bring an action for a derivative suit under the Stock Corporation Act, Chapter 9 (§ 13.1-601 et seq.) of this title. Such action may be brought if members or managers with authority to do so have refused to bring the action or if an effort to cause those members or managers to bring the action is not likely to succeed. The derivative action may not be maintained if it appears that the plaintiff does not shall not commence or maintain a derivative proceeding unless the member fairly and adequately represent represents the interests of the members and the limited liability company in enforcing the right of the limited liability company and either:

1. Was a member of the limited liability company at the time of the act or omission complained of;

2. Became a member through transfer by operation of law from a person who was a member at that time; or

3. Became a member before public disclosure, and without knowledge, of the act or omission complained of.

B. No member may commence a derivative proceeding until:

1. A written demand has been made on the limited liability company to take suitable action; and

2. Ninety days have expired from the date delivery of the demand was made unless (i) the member has been notified before the expiration of 90 days that the demand has been rejected by the limited liability company or (ii) irreparable injury to the limited liability company would result by waiting until the end of the 90-day period.

C. If the limited liability company commences a review and evaluation of the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

INTRODUCED

SB1356