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SENATE BILL NO. 1006

Offered January 16, 2020

A *BILL to amend and reenact §§ 13.1-775.1, 13.1-936.1, and 13.1-1062, as it shall become effective, of the Code of Virginia, relating to business entities; annual registration.*

Patron—Reeves

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-775.1, 13.1-936.1, and 13.1-1062, as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 13.1-775.1. Annual registration fees to be paid by domestic and foreign corporations; penalty for failure to pay timely.

A. Every domestic corporation and every foreign corporation authorized to transact business in the Commonwealth shall pay into the state treasury on or before the last day of the twelfth month next succeeding the month in which it was incorporated or authorized to transact business in the Commonwealth, and by such date in each year thereafter, an annual registration fee as prescribed by this section, provided that the initial annual registration fee to be paid by a domestic corporation created by entity conversion shall be due in the year after the calendar year in which it converted. At the discretion of the Commission, the annual registration fee due date for a corporation may be extended, on a monthly basis for a period of not less than one month nor more than 11 months, at the request of its registered agent of record or as may be necessary to distribute annual registration fee due dates of corporations as equally as practicable throughout the year on a monthly basis.

Any such corporation whose number of authorized shares is 5,000 or less shall pay an annual registration fee of \$50. Any such corporation whose number of authorized shares is more than 5,000 shall pay an annual registration fee of \$50 plus \$15 for each 5,000 shares or fraction thereof in excess of 5,000 shares, up to a maximum of \$850.

The annual registration fee shall be irrespective of any specific license tax or other tax or fee imposed by law upon the corporation for the privilege of carrying on its business in the Commonwealth or upon its franchise, property or receipts.

B. Each year, the Commission shall ascertain from its records the number of authorized shares of each domestic corporation and each foreign corporation authorized to transact business in the Commonwealth, as of the first day of the second month next preceding the month in which it was incorporated or authorized to transact business in the Commonwealth and, except as provided in subsection A, shall assess against each such corporation the annual registration fee herein imposed. In any year in which a corporation's annual registration fee due date is extended pursuant to subsection A, the annual registration fee assessment shall be increased by a prorated amount to cover the period of extension. A statement of the assessment, when made, shall be forwarded by the clerk of the Commission to the Comptroller and to each such corporation.

C. Any domestic or foreign corporation that fails to pay the annual registration fee herein imposed within the time prescribed shall incur a penalty of 10 percent of the annual registration fee, or \$10, whichever is greater, which shall be added to the amount of the annual registration fee due. The penalty shall be in addition to any other penalty or liability imposed by law.

D. *Notwithstanding any provisions of this section or other provisions of law to the contrary, any domestic or foreign corporation whose number of authorized shares is 5,000 or less may prepay up to five years of its annual registration fee. If the number of authorized shares of any such corporation that has paid in advance increases to more than 5,000 during the prepaid period, such corporation shall pay any additional registration fee amount on an annual basis.*

E. The fees paid into the state treasury under this section shall be set aside as a special fund to be used only by the Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the clerk of the Commission, together with all other costs incurred by the Commission in supervising, implementing and administering the provisions of Part 5 (§ 8.9A-501 et seq.) of Title 8.9A, this title, except for Chapters 5 (§ 13.1-501 et seq.) and 8 (§ 13.1-557 et seq.) and Article 7 (§ 55.1-653 et seq.) of Chapter 6 of Title 55.1, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal year.

§ 13.1-936.1. Annual registration fees to be paid by domestic and foreign corporations; penalty

59 for failure to pay timely.

60 A. Every domestic corporation and every foreign corporation authorized to conduct its affairs in the
61 Commonwealth shall pay into the state treasury on or before the last day of the twelfth month next
62 succeeding the month in which it was incorporated or authorized to conduct its affairs in the
63 Commonwealth, and by such date in each year thereafter, an annual registration fee of \$25. At the
64 discretion of the Commission, the annual registration fee due date for a corporation may be extended, on
65 a monthly basis for a period of not less than one month nor more than 11 months, at the request of its
66 registered agent of record or as may be necessary to distribute annual registration fee due dates of
67 corporations as equally as practicable throughout the year on a monthly basis.

68 The annual registration fee shall be irrespective of any specific license tax or other tax or fee
69 imposed by law upon the corporation for the privilege of carrying on its business in the Commonwealth
70 or upon its franchise, property or receipts. Nonstock corporations incorporated before 1970 which were
71 not liable for the annual registration fee therefor shall not be liable for an annual registration fee
72 hereafter.

73 B. Each year, the Commission shall ascertain from its records each domestic corporation and each
74 foreign corporation authorized to conduct its affairs in the Commonwealth, as of the first day of the
75 second month next preceding the month in which it was incorporated or authorized to conduct its affairs
76 in the Commonwealth and shall assess against each such corporation the annual registration fee herein
77 imposed. In any year in which a corporation's annual registration fee due date is extended pursuant to
78 subsection A, the annual registration fee assessment shall be increased by a prorated amount to cover the
79 period of extension. A statement of the assessment, when made, shall be forwarded by the clerk of the
80 Commission to the Comptroller and to each such corporation.

81 C. Any domestic or foreign corporation that fails to pay the annual registration fee herein imposed
82 within the time prescribed shall incur a penalty of \$10, which shall be added to the amount of the
83 annual registration fee due. The penalty shall be in addition to any other penalty or liability imposed by
84 law.

85 D. *Notwithstanding any provisions of this section or other provisions of law to the contrary, any*
86 *domestic or foreign corporation may prepay up to five years of its annual registration fee.*

87 E. The fees paid into the state treasury under this section shall be set aside as a special fund to be
88 used only by the Commission as it deems necessary to defray all costs of staffing, maintaining and
89 operating the office of the clerk of the Commission, together with all other costs incurred by the
90 Commission in supervising, implementing and administering the provisions of Part 5 (§ 8.9A-501 et
91 seq.) of Title 8.9A, this title, except for Chapters 5 (§ 13.1-501 et seq.) and 8 (§ 13.1-557 et seq.) and
92 Article 7 (§ 55.1-653 et seq.) of Chapter 6 of Title 55.1, provided that one-half of the fees collected
93 shall be credited to the general fund. The excess of fees collected over the projected costs of
94 administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal
95 year.

96 **§ 13.1-1062. (Effective July 1, 2020) Assessment of annual registration fees; annual registration**
97 **fees to be paid by domestic and foreign limited liability companies.**

98 A. Each domestic limited liability company, each protected series, each foreign limited liability
99 company registered to transact business in the Commonwealth, and each foreign protected series
100 registered to transact business in the Commonwealth shall pay into the state treasury on or before the
101 last day of the twelfth month next succeeding the month in which it was organized, established, or
102 registered to transact business in the Commonwealth, and by such date in each year thereafter, an annual
103 registration fee of \$50, provided that the initial annual registration fee to be paid by a domestic limited
104 liability company created by entity conversion shall be due in the year after the calendar year in which
105 it converted.

106 The annual registration fee shall be imposed irrespective of any specific license tax or other tax or
107 fee imposed by law upon the domestic or foreign limited liability company or any protected series
108 thereof for the privilege of carrying on its business in the Commonwealth or upon its franchise, property
109 or receipts.

110 B. Each year, the Commission shall ascertain from its records each domestic limited liability
111 company, each protected series, each foreign limited liability company registered to transact business in
112 the Commonwealth, and each foreign protected series registered to transact business in the
113 Commonwealth, as of the first day of the second month next preceding the month in which it was
114 organized, established, or registered to transact business in the Commonwealth, and, except as provided
115 in subsection A, shall assess against each such limited liability company and each such protected series
116 the annual registration fee herein imposed.

117 C. At the discretion of the Commission, the annual registration fee due date for a limited liability
118 company may be extended, on a monthly basis for a period of not less than one month nor more than
119 11 months, at the request of its registered agent of record or as may be necessary to distribute annual
120 registration fee due dates of limited liability companies as equally as practicable throughout the year on

121 a monthly basis.

122 D. A statement of the assessment, when made, shall be forwarded by the clerk of the Commission to
123 the Comptroller and to each domestic and foreign limited liability company and each protected series
124 thereof.

125 E. Any domestic limited liability company that has ceased to exist in the Commonwealth because of
126 the issuance of a certificate of cancellation of existence, certificate of organization surrender, or
127 certificate of entity conversion, any protected series that has been canceled, any foreign limited liability
128 company that has obtained a certificate of cancellation, or any foreign protected series that has obtained
129 a certificate of cancellation, effective on or before its annual registration fee due date pursuant to
130 subsection A in any year, shall not be required to pay the annual registration fee for that year. Any
131 domestic or foreign limited liability company that has merged, effective on or before its annual
132 registration fee due date pursuant to subsection A in any year, into a surviving domestic or foreign
133 corporation, limited liability company, business trust, limited partnership, or partnership that files with
134 the Commission an authenticated copy of the instrument of merger on or before such date, shall not be
135 required to pay the annual registration fee for that year. Any foreign limited liability company that has
136 converted, effective on or before its annual registration fee due date pursuant to subsection A in any
137 year, to a different entity type that files with the Commission an authenticated copy of the instrument of
138 entity conversion on or before such date, shall not be required to pay the annual registration fee for that
139 year. The Commission shall cancel the annual registration fee assessments specified in this subsection
140 that remain unpaid.

141 F. Registration fee assessments that have been paid shall not be refunded.

142 G. *Notwithstanding any provisions of this section or other provisions of law to the contrary, any*
143 *domestic or foreign limited liability company may prepay up to five years of its annual registration fee.*

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