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**HOUSE BILL NO. 309**

Offered January 12, 2022

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*A BILL to amend and reenact §§ 13.1-1062 and 13.1-1064 of the Code of Virginia, relating to limited liability companies; prepayment of annual registration fees.*

Patrons—Rasoul, Gooditis, Head, Jenkins, McNamara and Webert

Referred to Committee on Commerce and Energy

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 13.1-1062 and 13.1-1064 of the Code of Virginia are amended and reenacted as follows:**

**§ 13.1-1062. Assessment of annual registration fees; annual registration fees to be paid by domestic and foreign limited liability companies.**

A. Every domestic limited liability company, every protected series, every foreign limited liability company registered to transact business in the Commonwealth, and every foreign protected series registered to transact business in the Commonwealth shall pay into the state treasury, *except as provided in subsection F*, on or before the last day of the twelfth month next succeeding the month in which it was organized, established, or registered to transact business in the Commonwealth, and by such date in each year thereafter, an annual registration fee of \$50, provided that (i) for a domestic limited liability company that became a domestic limited liability company by conversion from a domestic stock corporation or nonstock corporation, or by domestication from a foreign limited liability company that was registered to transact business in the Commonwealth at the time of the domestication, the annual registration fee shall be paid, *except as provided in subsection F*, each year on or before the date on which its annual registration fee was due prior to the conversion or domestication and (ii) for a domestic limited liability company that became a domestic limited liability company by conversion from a domestic limited partnership or business trust, the annual registration fee shall be paid, *except as provided in subsection F*, each year on or before the last day of the twelfth month next succeeding the month in which it was originally incorporated, organized, or formed as an entity, except the initial annual registration fee to be paid by the domestic limited liability company shall be due, *notwithstanding the provisions of subsection F*, in the year after the calendar year in which the conversion became effective when the annual registration fee of the domestic limited partnership or business trust was paid for the calendar year in which it was converted, or when the month in which the conversion was effective precedes the month in which the domestic limited partnership or business trust was originally incorporated, organized, or formed as an entity by two months or less.

The annual registration fee shall be imposed irrespective of any specific license tax or other tax or fee imposed by law upon the domestic or foreign limited liability company or any protected series thereof 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 each domestic limited liability company, each protected series, each foreign limited liability company registered to transact business in the Commonwealth, and each foreign protected series registered to transact business in the Commonwealth, as of the first day of the second month next preceding the month in which it was organized, established, or registered to transact business in the Commonwealth, and, except as provided in subsection A, shall assess against each such limited liability company and each such protected series the annual registration fee herein imposed. Notwithstanding the foregoing, (i) for a domestic limited liability company that became a domestic limited liability company by conversion from a domestic stock corporation or nonstock corporation, or by domestication from a foreign limited liability company that was registered to transact business in the Commonwealth at the time of the domestication, the assessment shall be made as of the first day of the second month next preceding the month in which its annual registration fee was due prior to the conversion or domestication and (ii) for a domestic limited liability company that became a domestic limited liability company by conversion from a domestic limited partnership or business trust, except as provided in subsection A, the assessment shall be made as of the first day of the second month next preceding the month in which the domestic limited liability company was originally incorporated, organized, or formed as an entity.

C. At the discretion of the Commission, the annual registration fee due date for a limited liability company 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 limited liability companies as equally as practicable throughout the year on

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59 a monthly basis.

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

63 E. A domestic or foreign limited liability company shall not be required to pay the annual  
64 registration fee assessed against it pursuant to subsection B in any year if (i) the Commission issues or  
65 files any of the following types of certificate or instrument and (ii) the certificate or instrument is  
66 effective on or before the annual registration fee due date:

67 1. A certificate of cancellation of existence or a certificate of organization surrender for a domestic  
68 limited liability company;

69 2. A certificate of cancellation for a foreign limited liability company;

70 3. A certificate of merger or an authenticated copy of an instrument of merger for a domestic or  
71 foreign limited liability company that has merged into a surviving domestic limited liability company or  
72 other business entity or into a surviving foreign limited liability company or other business entity; or

73 4. An authenticated copy of an instrument of entity conversion for a foreign limited liability  
74 company that has converted to a different entity type; or

75 5. *An instrument indicating that the domestic or foreign limited liability company has paid annual*  
76 *registration fees in advance, pursuant to subsection F.*

77 The Commission shall cancel the annual registration fee assessments specified in this subsection that  
78 remain unpaid.

79 F. *A domestic or foreign limited liability company may prepay its annual registration fees for two or*  
80 *three years if prepayment is approved by the Commission and evidenced in an instrument indicating that*  
81 *the domestic or foreign limited liability company has paid annual registration fees in advance and*  
82 *whether the prepayment satisfies annual registration fees for two years or three years. Such prepayment*  
83 *shall constitute an exception to the annual payment schedules set forth in subsection A. A domestic or*  
84 *foreign limited liability company may elect to prepay its annual registration fees for two or three years*  
85 *at any time during the year preceding the last day of the twelfth month next succeeding the month in*  
86 *which it was organized, established, or registered to transact business in the Commonwealth.*

87 *Initial payments of annual registration fees shall be required as provided in subsection A. Nothing in*  
88 *this subsection shall be construed to limit or forego the initial annual registration fee for (i) a newly*  
89 *formed domestic or foreign limited liability company, (ii) a domestic limited liability company that*  
90 *became a domestic limited liability company by conversion from a domestic stock corporation or*  
91 *nonstock corporation or by domestication from a foreign limited liability company that was registered to*  
92 *transact business in the Commonwealth at the time of the domestication, or (iii) a domestic limited*  
93 *liability company that became a domestic limited liability company by conversion from a domestic*  
94 *limited partnership or business trust.*

95 G. Annual registration assessments that have been paid shall not be refunded.

96 ~~G.~~ H. The fees paid into the state treasury under this section and the fees collected under  
97 § 13.1-1005 shall be set aside and paid into the special fund created under § 13.1-775.1, and shall be  
98 used only by the Commission as it deems necessary to defray the costs of the Commission and of the  
99 office of the clerk of the Commission in supervising, implementing, administering and enforcing the  
100 provisions of this chapter. The projected excess of fees collected over the costs of administration and  
101 enforcement so incurred shall be paid into the general fund prior to the close of each fiscal year, based  
102 on the unexpended balance of the special fund at the end of the prior fiscal year. An adjustment of this  
103 transfer amount to reflect actual fees collected shall occur during the first quarter of the succeeding  
104 fiscal year.

105 **§ 13.1-1064. Penalty for failure to timely pay annual registration fees.**

106 A. Any domestic or foreign limited liability company, or any protected series thereof, that fails to  
107 pay the annual registration fee into the state treasury within the time prescribed in § 13.1-1062 shall  
108 incur a penalty of \$25, which shall be added to the amount of the annual registration fee due. The  
109 penalty prescribed herein shall be in addition to any other penalty or liability imposed by law.

110 B. The Commission shall mail to each domestic and foreign limited liability company that fails to  
111 pay the annual registration fee within the time prescribed in § 13.1-1062 a notice of assessment of the  
112 penalty imposed herein and of the impending cancellation of its existence or certificate of registration, as  
113 the case may be. *If applicable to the domestic or foreign limited liability company, and if the failure to*  
114 *pay its annual registration fee is not for an initial assessment of such fee, the notice of assessment of*  
115 *the penalty shall include information related to the prepayment of annual registration fees as provided*  
116 *in subsection F of § 13.1-1062 as a method of avoiding future delinquencies.*

117 C. The Commission shall mail to each protected series and each foreign protected series that fails to  
118 pay the annual registration fee within the time prescribed in § 13.1-1062 a notice of assessment of the  
119 penalty imposed herein and of its impending cancellation or the impending cancellation of its certificate  
120 of registration, as the case may be.