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HOUSE BILL NO. 309

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Energy
on January 25, 2022)

(Patron Prior to Substitute—Delegate Rasoul)

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

Be it enacted by the General Assembly of Virginia:

1. That § 13.1-1062 of the Code of Virginia is 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 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 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 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 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 a monthly basis.

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

E. A domestic or foreign limited liability company shall not be required to pay the annual

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60 registration fee assessed against it pursuant to subsection B in any year if (i) the Commission issues or
61 files any of the following types of certificate or instrument and (ii) the certificate or instrument is
62 effective on or before the annual registration fee due date:

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

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

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

69 4. An authenticated copy of an instrument of entity conversion for a foreign limited liability
70 company that has converted to a different entity type.

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

73 F. Annual registration assessments that have been paid shall not be refunded.

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

82 *H. Notwithstanding the provisions of this section, the Commission is authorized to establish a*
83 *process for online prepayment of the annual registration fees required by this section whereby a*
84 *domestic or foreign limited liability company may prepay its annual registration fees for two or three*
85 *years.*