

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 545

An Act to amend and reenact §§ 12.1-19, 12.1-20, 12.1-21.1, 13.1-603, 13.1-615, 13.1-615.1, 13.1-616, 13.1-658, 13.1-1005, and 13.1-1062 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 12.1-21.2 and by adding in Chapter 9 of Title 13.1 an article numbered 12.1, consisting of sections numbered 13.1-722.2 through 13.1-722.7, and an article numbered 12.2, consisting of sections numbered 13.1-722.8 through 13.1-722.14; and to repeal § 13.1-617 of the Code of Virginia, relating to corporations; domestication and conversion; fees.

[H 2162]

Approved March 23, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 12.1-19, 12.1-20, 12.1-21.1, 13.1-603, 13.1-615, 13.1-615.1, 13.1-616, 13.1-658, 13.1-1005, and 13.1-1062 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 12.1-21.2 and by adding in Chapter 9 of Title 13.1 an article numbered 12.1, consisting of sections numbered 13.1-722.2 through 13.1-722.7 and an article numbered 12.2, consisting of sections numbered 13.1-722.8 through 13.1-722.14, as follows:

§ 12.1-19. Duties of clerk; records; copies.

The clerk of the Commission shall:

1. Keep a record of all the proceedings, orders, findings, and judgments of the public sessions of the Commission, and the minutes of the proceedings of each day's public session shall be read and approved by the Commission and signed by its chairman, or acting chairman;

2. Subject to the supervision and control of the Commission, have custody of and preserve all of the records, documents, papers, and files of the Commission, or which may be filed before it in any complaint, proceeding, contest, or controversy, and such records, documents, papers, and files shall be open to public examination in the office of the clerk to the same extent as the records and files of the courts of this Commonwealth;

3. When requested, make and certify copies from any record, document, paper, or file in his office, and if required, affix the seal of the Commission (or a facsimile thereof) thereto, and otherwise furnish information from the Commission records by any means the Commission may deem suitable; and, except when made at the instance of the Commission or on behalf of the Commonwealth, a political subdivision of the Commonwealth, or the government of the United States, he shall charge and collect the fees fixed by §§ ~~13.1-617~~ 12.1-21.1 and 12.1-21.2; and any such copy, so certified, shall have the same faith, credit, and legal effect as copies made and certified by the clerks of the courts of this Commonwealth from the records and files thereof;

4. Certify all allowances made by the Commission to be paid out of the public treasury for witness fees, service of process, or other expenses;

5. Issue all notices, writs, processes or orders awarded by the Commission, or authorized by law, or by the rules of the Commission;

6. Receive all fines and penalties imposed by the Commission, all moneys collected on judgments, all registration fees and franchise taxes required by law to be paid by corporations, including delinquencies thereof and all other fees collected by the Commission, and shall keep an accurate account of the same and the disposition of such receipts and shall, at least once in every thirty days during his term of office, render a statement of all such receipts and collections to the Comptroller, and pay the same into the treasury of the Commonwealth, and shall keep all such other accounts of such collections and disbursements, and shall make all such other reports thereof as may be required by law or by the regulations prescribed by the Comptroller; and

7. Generally have the powers, discharge the functions, and perform the duties of a clerk of a court of record in all matters within the jurisdiction of the Commission. The Commission may designate one or more deputies or assistants of the clerk who may discharge any of his official duties during his continuance in office.

§ 12.1-20. Facts to be certified by clerk upon request; signing and sealing; fees.

The clerk of the Commission shall, when requested, certify any one or more of the following facts:

1. That a named domestic corporation is organized and existing under and by virtue of the laws of Virginia and is in good standing.

2. That a named foreign corporation of a named state is authorized to do business in Virginia.

3. That the corporate existence of a named domestic corporation has been terminated, together with the date of termination and the reason for the termination.

4. That a named domestic corporation has filed articles of dissolution, together with the date thereof, and whether or not voluntary dissolution proceedings have been revoked.

5. That a named domestic corporation whose corporate existence was automatically terminated has been reinstated, together with the date thereof.

6. That a named foreign corporation of a named state is not authorized to do business in Virginia; and, if it was previously authorized to do business in Virginia, the date when it ceased to be so authorized, and the reason therefor.

7. That a name alleged or supposed to be the name of a corporation is not the name of a domestic corporation or of a foreign corporation authorized to do business in Virginia.

8. The names and addresses of the officers and directors of a corporation contained in its annual report of a particular date.

9. The name and address of the registered agent and registered office of a corporation, together with the date of his appointment.

10. The name and address of a former registered agent and registered office of a corporation, together with the date of his appointment and the date when the corporation filed a statement appointing a new registered agent.

11. That a particular security has or has not been registered for sale in Virginia pursuant to the provisions of the Securities Act (§ 13.1-501 et seq.).

12. That a statement or other document required or permitted by law to be filed in the office of the clerk of the Commission has not been filed in his office.

13. The existence or nonexistence of any other fact appearing from the official records of the Commission, unless the disclosure of such fact is forbidden by law.

The certificate shall be signed by the clerk or by a member of his staff and shall be sealed with the seal of the Commission. When so sealed, the certificate shall be admitted in evidence in all cases, civil and criminal, as prima facie evidence of the facts contained in it.

Except as otherwise provided in ~~§ 12.1-21~~ *12.1-21.1 or subsection D of § 12.1-21.2*, the clerk shall charge and collect a fee of six dollars for each certificate.

§ 12.1-21.1. Fees to be charged by clerk for certain information and certificates.

A. When a request made under subdivision 3 of § 12.1-19 or under § 12.1-20 relates to the Uniform Commercial Code, or when a request for information is made under Title 8.9A, the clerk of the Commission shall charge and collect the following fees, *except as otherwise provided in subsection D of § 12.1-21.2*:

1. For a search and written response, seven dollars;
2. For a search and provision of a copy of a record, seven dollars plus one dollar for each of the first two pages and fifty cents for each additional page thereafter;
3. For affixing the seal of the Commission to a certificate, one dollar; and
4. For furnishing or making available information contained in the Commission's records by computer or other means, reasonable fees as are fixed by Commission order or rule that reflect all costs related to furnishing or making available the information and providing the service.

B. Any response or certificate shall be signed by the clerk or a member of his staff. Any signature may be a facsimile.

C. Any certificate to which the seal of the Commission is affixed shall be admitted in evidence in all cases, civil and criminal, as prima facie evidence of the facts contained in it.

D. No action shall be brought against the Commission or any member of its staff claiming damages for alleged errors or omissions in any response or certificate.

§ 12.1-21.2. *Miscellaneous charges.*

A. *The Commission shall charge and collect for furnishing a copy of any document, instrument or paper one dollar per page for the first two pages and fifty cents for each page thereafter and three dollars for the certificate and affixing the seal thereto.*

B. *For making up, certifying and transmitting a record on appeal the clerk shall charge and collect fifty dollars.*

C. *Except as otherwise provided by law, the Commission shall fix the fees to be charged for furnishing information from or otherwise providing access to or utilization of the Commission's records by computer or other means. Such fees shall as nearly as practicable reflect all costs of furnishing the information and providing the service, and, when collected, shall be set aside and paid into the special fund created under § 13.1-775.1.*

D. *In addition to other fees prescribed by law, the Commission may charge and collect fees for (i) requested expedited or special handling of business entity or Uniform Commercial Code filings processed in its Clerk's Office, (ii) requested expedited provision of copies of records in its Clerk's Office, or (iii) requested expedited provision of services, or the issuance of certificates, pursuant to subdivision 3 of § 12.1-19, or under § 12.1-20 or § 12.1-21.1. Such fees, when collected, shall be set aside and paid into the special fund created under § 13.1-775.1.*

§ 13.1-603. Definitions.

In this chapter:

"Articles of incorporation" means all documents constituting, at any particular time, the charter of a corporation. It includes the original charter issued by the General Assembly, a court or the Commission

and all amendments including certificates of merger, except a certificate of merger with a subsidiary pursuant to § 13.1-719, consolidation, serial designation, reduction or correction. It excludes articles of exchange filed by an acquiring corporation. When the articles of incorporation have been restated pursuant to any articles of amendment or merger, it includes only the restated articles of incorporation, including any articles of serial designation, without the accompanying articles of amendment or merger.

"Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

"Certificate," when relating to articles filed with the Commission, means the order of the Commission that makes the articles effective, together with the articles.

"Commission" means the State Corporation Commission of Virginia.

"Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

"Corporation" or "domestic corporation" means a corporation authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this Act or existing pursuant to the laws of this Commonwealth on January 1, 1986, or which, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of this Commonwealth, even though also being a corporation organized under laws other than the laws of this Commonwealth, *or which has become a domestic corporation of this Commonwealth pursuant to Article 12.1 (§ 13.1-722.2 et seq.) or Article 12.2 (§ 13.1-722.8 et seq.) of this chapter.*

"Deliver" includes mail.

"Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in Article 8.1 (§ 13.1-672.1 et seq.) of Chapter 9 of this title, a foreign corporation.

"Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness of the corporation; or otherwise. Distribution does not include acquisition by a corporation of its shares from the estate or personal representative of a deceased shareholder, or any other shareholder, but only to the extent the acquisition is effected using the proceeds of insurance on the life of such deceased shareholder and the board of directors approved the policy and the terms of the redemption prior to the shareholder's death.

"Domestic limited liability company" has the same meaning as specified in § 13.1-1002.

"Domestic limited partnership" has the same meaning as specified in § 50-73.1.

"Domestic partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under § 50-73.88, or predecessor law of this Commonwealth, and includes, for all purposes of the laws of this Commonwealth, a registered limited liability partnership.

"Effective date of notice" is defined in § 13.1-610.

"Employee" includes an officer but not a director. A director may accept duties that make him also an employee.

"Entity" includes corporation and foreign corporation; nonstock corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States and foreign government.

"Foreign corporation" means a corporation authorized by law to issue shares, organized under laws other than the laws of this Commonwealth.

"Foreign limited liability company" has the same meaning as specified in § 13.1-1002.

"Foreign limited partnership" has the same meaning as specified in § 50-73.1.

"Foreign partnership" means an association of two or more persons to carry on as co-owners of a business for profit formed under the laws of any state or jurisdiction other than this Commonwealth, and includes, for all purposes of the laws of this Commonwealth, a foreign registered limited liability partnership.

"Foreign registered limited liability partnership" has the same meanings as specified in §§ 50-2 and 50-73.79.

"Government subdivision" includes authority, county, district, and municipality.

"Includes" denotes a partial definition.

"Individual" includes the estate of an incapacitated or deceased individual.

"Means" denotes an exhaustive definition.

"Notice" is defined in § 13.1-610.

"Person" includes individual and entity.

"Principal office" means the office, in or out of this Commonwealth, where the principal executive offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or out of this Commonwealth, so designated by the board of directors. The designation of the principal office in the most recent annual report filed pursuant to § 13.1-775 shall be conclusive for purposes of this chapter.

"Proceeding" includes civil suit and criminal, administrative, and investigatory action conducted by a

governmental agency.

"Record date" means the date established under Article 7 (§ 13.1-638 et seq.) or Article 8 (§ 13.1-654 et seq.) of this chapter on which a corporation determines the identity of its shareholders for purposes of this chapter.

"Share" means the unit into which the proprietary interests in a corporation are divided.

"Shareholder" means the person in whose name shares are registered in the records of the corporation, the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation, or the beneficial owner of shares held in a voting trust.

"State" when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions; and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

"Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

"United States" includes district, authority, bureau, commission, department, and any other agency of the United States.

"Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

§ 13.1-615. Fees to be collected by Commission; payment of fees prerequisite to Commission action; exceptions.

A. The Commission shall assess the registration fees and shall charge and collect the filing fees, charter fees, and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document which is not accepted for filing, at any time within one year from the date of its payment.

B. The Commission shall not issue any certificate or file any document specified in this chapter, except the report required by § 13.1-775, until all fees, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid. However, a certificate of termination of corporate existence may be issued under the provisions of § 13.1-751 without requiring prepayment of any such assessment. Except as provided hereinafter, the issuance of such certificate shall not have the effect of releasing any obligation that has accrued in favor of this Commonwealth on account of such assessment.

Any domestic corporation ~~which~~ *that* has ceased to exist *in this Commonwealth* because of the issuance of a certificate of termination of corporate existence, *certificate of incorporation surrender or certificate of entity conversion* or any foreign corporation which has obtained a certificate of withdrawal, effective prior to its annual report due date pursuant to subsection C of § 13.1-775 in any year, shall not be required to pay the registration fee for that year. Any domestic or foreign corporation which has merged, effective prior to its annual report due date pursuant to subsection C of § 13.1-775 in any year, into a surviving domestic corporation or into a surviving foreign corporation that files with the Commission the certificate of merger prior to such date, shall not be required to pay the registration fee for that year. The Commission shall enter an order withdrawing and cancelling the registration fee assessments specified in this section that remain unpaid. Any foreign corporation which has amended its articles of incorporation to reduce the number of shares it is authorized to issue, effective prior to its annual assessment date pursuant to subsection B of § 13.1-775.1 of a given year, and has timely filed an authenticated copy of the amendment with the Commission pursuant to § 13.1-760 after its annual assessment date pursuant to subsection B of § 13.1-775.1, shall have its registration fee reassessed to reflect the new number of authorized shares. Registration fee assessments that have been paid shall not be refunded.

§ 13.1-615.1. Charter and entrance fees for corporations.

A. Every domestic corporation, upon the granting of its charter *or upon domestication*, shall pay a fee into the state treasury, and every foreign corporation, when it obtains from the State Corporation Commission a certificate of authority to do business in this Commonwealth, shall pay an entrance fee into the state treasury. The fee in each case is to be ascertained and fixed as follows:

For any domestic or foreign corporation whose number of authorized shares is 1,000,000 or fewer shares - \$50 for each 25,000 shares or fraction thereof;

For any domestic or foreign corporation whose number of authorized shares is more than 1,000,000 shares - \$2,500.

B. *For any foreign corporation that files articles of domestication and that had authority to transact business in this Commonwealth at the time of such filing, the charter fee to be charged upon domestication shall be an amount equal to the difference between the amount that would be required by this section and the amount already paid as an entrance fee by such corporation.* Whenever by articles of amendment or articles of merger, the number of authorized shares of any domestic or foreign corporation or of the surviving corporation is increased, the charter or entrance fee to be charged shall be an amount equal to the difference between the amount already paid as a charter or entrance fee by

such corporation and the amount that would be required by this chapter to be paid if the increased number of authorized shares were being stated at that time in the original articles of incorporation. If no charter or entrance fee has been heretofore paid to this Commonwealth, the amount to be paid shall be the same as would have to be paid on original incorporation or application for authority to transact business.

§ 13.1-616. Fees for filing documents or issuing certificates.

The Commission shall charge and collect the following fees, *except as provided in § 12.1-21.2*:

A. For filing any one of the following, the fee shall be twenty-five dollars:

1. Articles of incorporation, *domestication*, *entity conversion* or *incorporation surrender*.
2. Articles of amendment or restatement.
3. Articles of merger or share exchange.
4. Articles of correction.

5. An application of a foreign corporation for a certificate of authority to transact business in this Commonwealth.

6. An application of a foreign corporation for an amended certificate of authority to transact business in this Commonwealth.

7. A copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this Commonwealth.

8. A copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this Commonwealth.

B. For filing any one of the following, the fee shall be ten dollars:

1. An application to reserve a corporate name.
2. A notice of transfer of a reserved corporate name.
3. An application for use of an indistinguishable name.
4. Articles of dissolution.
5. Articles of revocation of dissolution.
6. Articles of termination of corporate existence.
7. A statement of withdrawal of a foreign corporation.

C. For issuing a certificate of change of name the fee shall be five dollars.

§ 13.1-658. Notice of meeting.

A. A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting. Such notice shall be given no less than ten nor more than sixty days before the meeting date except that notice of a shareholders' meeting to act on an amendment of the articles of incorporation, a plan of merger, ~~or~~ share exchange, *domestication* or *entity conversion*, a proposed sale of assets pursuant to § 13.1-724, or the dissolution of the corporation shall be given not less than twenty-five nor more than sixty days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

B. Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not state the purpose or purposes for which the meeting is called.

C. Notice of a special meeting shall state the purpose or purposes for which the meeting is called.

D. If not otherwise fixed under § 13.1-656 or § 13.1-660, the record date for determining shareholders entitled to notice of and to vote at an annual or special meeting is the close of business on the day before the effective date of the notice to shareholders.

E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different date, time, or place notice need not be given if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed under § 13.1-660, however, notice of the adjourned meeting shall be given under this section to persons who are shareholders as of the new record date.

F. Notwithstanding the foregoing, no notice of a shareholder's meeting need be given to a shareholder if (i) an annual report and proxy statements for two consecutive annual meetings of shareholders or (ii) all, and at least two, checks in payment of dividends or interest on securities during a twelve-month period, have been sent by first-class United States mail, addressed to the shareholder at his address as it appears on the share transfer books of the corporation, and returned undeliverable. The obligation of the corporation to give notice of shareholders' meetings to any such shareholder shall be reinstated once the corporation has received a new address for such shareholder for entry on its share transfer books.

G. A corporation having 300 or more record shareholders may notify shareholders of annual and special shareholders' meetings under this section by electronic transmission upon receipt by the secretary of the corporation of (i) a writing signed by the shareholder or (ii) a transmission of a telegram, cablegram or other means of electronic transmission from the shareholder, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which the secretary can determine the telegram, cablegram or other means of electronic transmission was authorized by the shareholder, authorizing delivery of such notices by

electronic transmission.

*Article 12.1.
Domestication.*

§ 13.1-722.2. Domestication.

A. A foreign corporation may become a domestic corporation if the laws of the jurisdiction in which the foreign corporation is incorporated authorize it to domesticate in another jurisdiction. The laws of this Commonwealth shall govern the effect of domesticating in this Commonwealth pursuant to this article.

B. A domestic corporation not required by law to be a domestic corporation may become a foreign corporation if the jurisdiction in which the corporation intends to domesticate allows for the domestication. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved in the manner provided in this article. The laws of the jurisdiction in which the corporation domesticates shall govern the effect of domesticating in that jurisdiction.

C. The plan of domestication shall set forth:

1. A statement of the jurisdiction in which the corporation is to be domesticated; and
2. The terms and conditions of the domestication; provided, however, that such terms and conditions may not alter the designation, rights, preferences or limitations of all or part of the authorized shares except to the extent required to conform to the requirements of this chapter.

D. The plan of domestication may include:

1. Subject to the provisions of subsection C, amendments to the articles of incorporation of the corporation following its domestication or a restatement of the articles of incorporation; and
2. Any other provision relating to the domestication.

E. The plan of domestication may also include a provision that the board of directors may amend the plan at any time prior to issuance of the certificate of domestication or such other document required by the laws of the other jurisdiction to consummate the domestication. An amendment made subsequent to the submission of the plan to the shareholders of the corporation shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the shares of any class or series of the corporation.

§ 13.1-722.3. Action on plan of domestication by a domestic corporation.

In the case of a domestic corporation:

A. The board of directors of the corporation shall adopt the plan of domestication.

B. After adopting the plan of domestication the board of directors shall submit the plan of domestication for approval by the shareholders.

C. For the plan of domestication to be approved:

1. The board of directors shall recommend the plan to the shareholders unless the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation and communicates the basis of its determination to the shareholders with the plan; and
2. The shareholders shall approve the plan as provided in subsection F.

D. The board of directors may condition its submission of the plan of domestication to the shareholders on any basis.

E. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658 at which the plan of domestication is to be submitted for approval. The notice shall state that a purpose of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan.

F. Unless this chapter or the board of directors, acting pursuant to subsection D, requires a greater vote, the plan of domestication shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

§ 13.1-722.4. Articles of domestication.

A. After the domestication of a foreign corporation is approved in the manner required by the laws of the jurisdiction in which the corporation is incorporated, the corporation shall file with the Commission articles of domestication setting forth:

1. The name of the corporation immediately prior to the filing of the articles of domestication and, if that name is unavailable for use in this Commonwealth or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of § 13.1-630;
2. The plan of domestication;
3. The original jurisdiction of the corporation and the date the corporation was incorporated in that jurisdiction, and each subsequent jurisdiction and the date the corporation was domesticated in each such jurisdiction, if any, prior to the filing of the articles of domestication; and
4. A statement that the domestication is permitted by the laws of the jurisdiction in which the

corporation is incorporated and that the corporation has complied with those laws in effecting the domestication.

B. The articles of domestication shall have attached articles of incorporation that comply with the requirements of this chapter.

C. If the Commission finds that the articles of domestication comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of domestication.

D. The certificate of domestication shall become effective pursuant to § 13.1-606.

E. A foreign corporation's existence as a domestic corporation shall begin when the certificate of domestication is effective. Upon becoming effective, the certificate of domestication shall be conclusive evidence that all conditions precedent required to be performed by the foreign corporation have been complied with and that the corporation has been incorporated under this chapter.

F. If the foreign corporation is authorized to transact business in this Commonwealth under Article 17 (§ 13.1-757 et seq.) of this chapter, its certificate of authority shall be cancelled automatically on the effective date of the certificate of domestication issued by the Commission.

§ 13.1-722.5. Surrender of articles of incorporation upon domestication.

A. Whenever a domestic corporation has adopted and approved, in the manner required by this article, a plan of domestication providing for the corporation to be domesticated under the laws of another jurisdiction, the corporation shall file with the Commission articles of incorporation surrender setting forth:

1. The name of the corporation;
2. The corporation's new jurisdiction of incorporation;
3. The plan of domestication;
4. A statement that the articles of incorporation surrender are being filed in connection with the domestication of the corporation as a foreign corporation to be incorporated under the laws of another jurisdiction and that the corporation is surrendering its charter under the laws of this Commonwealth;

5. A statement:

- a. That the plan was adopted by the unanimous consent of the shareholders; or
- b. That the plan was submitted to the shareholders by the board of directors in accordance with this chapter, and a statement of:

(1) The designation, number of outstanding shares and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group;

6. A statement that the domestic corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was incorporated in this Commonwealth;

7. A mailing address to which the clerk may mail a copy of any process served on him under subdivision 6; and

8. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

B. If the Commission finds that the articles of incorporation surrender comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation surrender.

C. The corporation shall automatically cease to be a domestic corporation when the certificate of incorporation surrender becomes effective.

D. If the former domestic corporation intends to continue to transact business in the Commonwealth, then, within thirty days after the effective date of the certificate of incorporation surrender, it shall deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth pursuant to § 13.1-759 together with a copy of its instrument of domestication and articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated or domesticated.

§ 13.1-722.6. Effect of domestication.

A. When a foreign corporation's certificate of domestication in this Commonwealth becomes effective, with respect to that corporation:

1. The title to all real estate and other property remains in the corporation without reversion or impairment;
2. The liabilities remain the liabilities of the corporation;
3. A proceeding pending may be continued by or against the corporation as if the domestication did not occur;
4. The articles of incorporation attached to the articles of domestication constitute the articles of incorporation of the corporation; and

5. The corporation is deemed to:

- a. Be incorporated under the laws of this Commonwealth for all purposes;
- b. Be the same corporation as the corporation that existed under the laws of the jurisdiction or jurisdictions in which it was originally incorporated or formerly domiciled; and
- c. Have been incorporated on the date it was originally incorporated or organized.

B. Any shareholder of a foreign corporation that domesticates into this Commonwealth who, prior to the domestication, was liable for the liabilities or obligations of the corporation is not released from those liabilities or obligations by reason of the domestication.

§ 13.1-722.7. Abandonment of domestication.

A. Unless a plan of domestication of a domestic corporation prohibits abandonment of the domestication without shareholder approval, after the domestication has been authorized, and at any time before the certificate of domestication filed in the other jurisdiction has become effective, the domestication may be abandoned without further shareholder action in accordance with the procedure set forth in the plan or, if none is set forth, in the manner determined by the board of directors.

B. If a domestication is abandoned under subsection A after articles of incorporation surrender have been filed with the Commission but before the certificate of incorporation surrender has become effective, written notice that the domestication has been abandoned in accordance with this section shall be filed with the Commission prior to the effective date of the certificate of incorporation surrender. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

C. If the domestication of a foreign corporation into this Commonwealth is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the Commission but before the certificate of domestication has become effective in this Commonwealth, written notice that the domestication has been abandoned shall be filed with the Commission prior to the effective date of the certificate of domestication. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

Article 12.2.

Conversion.

§ 13.1-722.8. Definitions.

In this article:

"Articles of organization" has the same meaning specified in § 13.1-1002.

"Converting entity" means the domestic corporation or domestic limited liability company that adopts a plan of entity conversion pursuant to this article.

"Corporation" has the same meaning specified in § 13.1-603.

"Limited liability company" has the same meaning specified in § 13.1-1002.

"Member" has the same meaning specified in § 13.1-1002.

"Membership interest" or "interest" has the same meaning specified in § 13.1-1002.

"Surviving entity" means the corporation or limited liability company that is in existence immediately after consummation of an entity conversion pursuant to this article.

§ 13.1-722.9. Entity conversion.

A. A corporation may become a limited liability company pursuant to a plan of entity conversion. Such a plan shall be adopted and approved by the corporation in accordance with the procedures of this article.

B. A limited liability company may become a domestic corporation pursuant to a plan of entity conversion. Such plan shall be adopted and approved by the limited liability company in accordance with the provisions of this article.

§ 13.1-722.10. Plan of entity conversion.

A. A plan of entity conversion shall set forth:

1. In the case of a conversion of a corporation into a limited liability company:

a. The terms and conditions of the conversion, including the manner and basis of converting the shares of the corporation into interests of the surviving entity preserving the ownership proportion and relative rights, preferences, and limitations of each such share; and

b. The full text, as they will be in effect immediately after consummation of the conversion, of the articles of organization of the surviving entity.

2. In the case of a conversion of a limited liability company into a corporation:

a. The terms and conditions of the conversion, including the manner and basis of converting the interests of the limited liability company into shares of the surviving entity preserving the ownership proportion and relative rights, preferences, and limitations of each such interest; and

b. The full text of the articles of incorporation of the surviving entity as they will be in effect immediately after consummation of the conversion; and

3. Any other provision relating to the conversion that may be desired.

B. In the case of a corporation that is a converting entity, the plan of entity conversion may also include a provision that the board of directors may amend the plan prior to the issuance of the certificate of entity conversion. An amendment made subsequent to the submission of the plan to the

shareholders shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the shares of any class or series of the converting entity.

C. In the case of a limited liability company that is a converting entity, the plan of entity conversion may also include a provision that the plan of entity conversion may be amended prior to the issuance of the certificate of entity conversion. An amendment made subsequent to the submission of the plan to the members shall not alter or change any of the terms or conditions of the plan if the change would adversely affect the membership interests of the converting entity.

§ 13.1-722.11. Action on plan of entity conversion.

A. In the case of a corporation that is a converting entity:

1. The board of directors of the converting entity shall adopt the plan of entity conversion.

2. After adopting the plan of entity conversion, the board of directors shall submit the plan for approval by the shareholders.

3. For the conversion to be approved:

a. The board of directors shall recommend the plan to the shareholders unless the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation and communicates the basis of its determination to the shareholders with the plan; and

b. The shareholders shall approve the plan as provided in subdivision 6.

4. The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis.

5. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658 at which the plan of entity conversion is to be submitted for approval. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy of the plan.

6. Unless this chapter or the board of directors, acting pursuant to subdivision 4, requires a greater vote, the plan of entity conversion shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes entitled to be cast by that voting group. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the plan by each voting group entitled to vote on the plan at a meeting at which a quorum of the voting group exists.

B. In the case of a limited liability company that is a converting entity, the plan of entity conversion shall be approved by the members of the limited liability company in the manner provided in the limited liability company's operating agreement or articles of organization for amendments or, if no such provision is made in an operating agreement or articles of organization, by the unanimous vote of the members of the limited liability company.

§ 13.1-722.12. Articles of entity conversion.

A. After the conversion of a corporation into a limited liability company has been adopted and approved as required by this article, the converting entity shall file with the Commission articles of entity conversion setting forth:

1. The name of the corporation immediately prior to the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which name shall satisfy the requirements of the laws of this Commonwealth;

2. The plan of entity conversion, including the full text of the articles of organization of the surviving entity as they will be in effect immediately after consummation of the conversion;

3. A statement:

a. That the plan was adopted by the unanimous consent of the shareholders; or

b. That the plan was submitted to the shareholders by the board of directors in accordance with this chapter, and a statement of:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

B. After the conversion of a limited liability company into a corporation has been adopted and approved as required by this article, the converting entity shall file with the Commission articles of entity conversion setting forth:

1. The name of the limited liability company immediately prior to the filing of the articles of entity conversion and the name to which the name of the limited liability company is to be changed, which name shall satisfy the requirements of § 13.1-630;

2. The plan of entity conversion, including the full text of the articles of incorporation of the surviving entity that comply with the requirements of §§ 13.1-619 and 13.1-620, as applicable, as they will be in effect immediately after the consummation of the conversion; and

3. A statement that the plan was adopted by the members of the limited liability company in the

manner provided in the limited liability company's operating agreement or articles of organization for amendments, or, if no such provision is made in an operating agreement or articles of organization, by the unanimous vote of the members of the limited liability company.

C. If the Commission finds that the articles of entity conversion comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of entity conversion.

§ 13.1-722.13. Effect of entity conversion.

When an entity conversion under this article becomes effective, with respect to that entity:

1. The title to all real estate and other property remains in the surviving entity without reversion or impairment;

2. The liabilities remain the liabilities of the surviving entity;

3. A proceeding pending may be continued by or against the surviving entity as if the conversion did not occur;

4. The articles of incorporation or articles of organization attached to the articles of conversion constitute the articles of incorporation or articles of organization of the surviving entity;

5. The shares or interests of the converting entity are reclassified into shares or interests in accordance with the plan of entity conversion; and the shareholders or members of the converting entity are entitled only to the rights provided in the plan of entity conversion or, in the case of a converting entity that is a corporation, to the rights, if any, they may have under subdivision A. 4. of § 13.1-730; and

6. The surviving entity is deemed to:

a. Be a corporation or limited liability company for all purposes;

b. Be the same corporation or limited liability company without interruption as the converting entity that existed prior to the conversion; and

c. Have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized; and

7. The converting entity shall cease to be a corporation or a limited liability company, as the case may be, when the certificate of entity conversion becomes effective.

§ 13.1-722.14. Abandonment of entity conversion.

A. Unless a plan of entity conversion of a corporation prohibits abandonment of the conversion without shareholder approval, after the conversion has been authorized, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned without further shareholder action in accordance with the procedure set forth in the plan or, if none is set forth, in the manner determined by the board of directors.

B. Unless the limited liability company's articles of organization, operating agreement or plan of entity conversion prohibits abandonment of the conversion after the conversion has been authorized, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned in the manner set forth in the plan or, if none is set forth, by majority vote of the members of the limited liability company.

C. If an entity conversion is abandoned under subsection A or B after articles of entity conversion have been filed with the Commission but before the certificate of entity conversion has become effective, written notice that the entity conversion has been abandoned in accordance with this section shall be filed with the Commission prior to the effective date of the certificate of entity conversion. The notice shall take effect upon filing and the entity conversion shall be deemed abandoned and shall not become effective.

§ 13.1-1005. Fees.

The Commission shall charge and collect the following fees:

1. For filing any one of the following, the fee shall be \$100:

a. Articles of organization.

b. An application for registration as a foreign limited liability company.

c. Articles of reinstatement.

d. Articles of entity conversion.

2. For filing any one of the following, the fee shall be \$25:

a. Articles of amendment.

b. A certificate of cancellation with respect to a domestic or foreign limited liability company.

c. A certificate of correction referred to in § 13.1-1011.1 or § 13.1-1055.

d. A copy of an instrument of merger of a foreign limited liability company referred to in § 13.1-1060.

e. Articles of merger.

3. For filing any one of the following, the fee shall be \$10:

a. An application to reserve or to renew the reservation of a name for use by a domestic or foreign limited liability company.

b. A notice of the transfer of a name reserved for use by a domestic or a foreign limited liability company.

4. For issuing a certificate pursuant to § 13.1-1067, six dollars for each certificate.

§ 13.1-1062. Annual registration fees to be paid by domestic and foreign limited liability companies.

A. Every domestic limited liability company, and every foreign limited liability company registered to transact business in this Commonwealth, shall pay into the state treasury on or before September 1 in each year after the calendar year in which it was formed or registered to transact business in this Commonwealth an annual registration fee of \$50; *provided that the initial annual registration fee to be paid by a domestic limited liability company created by conversion shall be due in the year after the calendar year in which it converted.*

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

2. That § 13.1-617 of the Code of Virginia is repealed effective July 1, 2002.

3. That the provisions of this act shall become effective on July 1, 2002.