

# VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

## CHAPTER 497

*An Act to amend and reenact §§ 13.1-710, 13.1-711, 13.1-722.1, and 13.1-759 of the Code of Virginia, relating to the Virginia Stock Corporation Act.*

[S 185]

Approved April 5, 2002

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

**1. That §§ 13.1-710, 13.1-711, 13.1-722.1, and 13.1-759 of the Code of Virginia are amended and reenacted as follows:**

§ 13.1-710. Articles of amendment.

A. A corporation amending its articles of incorporation shall file with the Commission articles of amendment setting forth:

1. The name of the corporation;
2. The text of each amendment adopted;
3. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;
4. The date of each amendment's adoption;

5. If an amendment was adopted by the incorporators or board of directors without shareholder ~~action~~ approval, a statement to that effect ~~and that~~, including the reason shareholder ~~action~~ approval was not required;

6. If an amendment was approved by the shareholders, either:

- a. A statement that the amendment was adopted by unanimous consent of the shareholders, or
- b. A statement that the amendment was proposed by the board of directors and submitted to the shareholders 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 amendment;

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

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

§ 13.1-711. Restated articles of incorporation.

A. A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

B. The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it shall be adopted as provided in § 13.1-707.

C. If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 13.1-658. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment it would make in the articles.

D. A corporation restating its articles of incorporation shall file with the Commission articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

1. *The name of the corporation immediately prior to restatement;*
2. *The date of the restatement's adoption;*
3. Whether the restatement contains an amendment to the articles ~~requiring shareholder approval~~ and, if it does not, that the board of directors adopted the restatement; ~~or~~

4. *If the restatement contains an amendment to the articles not requiring shareholder approval, the information required by subdivision A 5 of § 13.1-710; and*

2 5. *If the restatement contains an amendment to the articles requiring shareholder approval, the information required by subdivision A 6 of § 13.1-710.*

E. If the Commission finds that the articles of restatement comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of restatement. When the certificate of restatement is effective the restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

F. The Commission may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection D of this section.

§ 13.1-722.1. Merger of stock and nonstock corporations.

A. One or more stock corporations incorporated under this chapter may merge with one or more nonstock corporations incorporated under Chapter 10 (§ 13.1-801 et seq.) of this title. The surviving corporation may be or, pursuant to subdivision D 1, become a stock corporation or a nonstock corporation.

B. The board of directors of each stock corporation shall adopt and its shareholders, if required by § 13.1-718, shall approve, and the governing body of each nonstock corporation shall adopt and its members, if required by § ~~13.1-896~~ 13.1-895, shall approve, the plan of merger.

C. The plan of merger shall set forth:

1. The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

2. The terms and conditions of the merger and the mode of carrying the same into effect;

3. The manner and basis of converting the shares of each stock corporation and the membership interests of each nonstock corporation into shares, obligations or other securities of the surviving stock corporation or membership interests of the surviving nonstock corporation, and, if any shares of any such stock corporation are not to be converted solely into shares or other securities of the stock corporation or membership interests of the nonstock corporation surviving from such merger, the cash, other property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation or membership interests of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or membership interests, which cash, other property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of any stock corporation or membership interests of any nonstock corporation surviving from such merger.

D. The plan of merger may set forth:

1. Amendments to, or a restatement of, the articles of incorporation of the surviving corporation; and
2. Other provisions relating to the merger.

E. The plan of merger required by subsection B of this section, in the case of each stock corporation, shall be adopted and approved in the manner provided in this article and, in the case of each nonstock corporation, shall be adopted and approved in the manner provided in Article 11 (§ 13.1-894 et seq.) of Chapter 10 of this title.

F. After a plan of merger is approved by the shareholders and members, or adopted by the board of directors if shareholder and/or member approval is not required, the surviving corporation shall file with the Commission articles of merger setting forth:

1. The plan of merger;

2. If shareholder approval was not required, a statement to that effect, including the reason approval was not required;

3. If approval of the shareholders of one or more stock corporations party to the merger was required, with respect to each such corporation, either:

- a. A statement that the plan of merger was adopted by the unanimous consent of the shareholders; or
- b. A statement 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.

4. If the members of any merging nonstock corporation have voting rights, then as to each such corporation, either:

- a. A statement that the plan of merger was adopted by the unanimous consent of the members; or
- b. A statement that the plan was submitted to the members by the board of directors in accordance with the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.), and a statement of:

(1) The existence of a quorum of 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 by each voting group was sufficient for approval by that voting group.

5. If any merging nonstock corporation has no members having voting rights, then a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

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

§ 13.1-759. Application for certificate of authority.

A. A foreign corporation may apply to the Commission for a certificate of authority to transact business in this Commonwealth. The application shall be made on forms prescribed and furnished by the

Commission. The application shall set forth:

1. The name of the corporation, *and if the corporation is prevented by § 13.1-762 from using its own name in this Commonwealth, a designated name that satisfies the requirements of subsection B of § 13.1-762*;

2. The name of the state or country under whose law it is incorporated;

3. The date of incorporation and period of duration;

4. The street address of the foreign corporation's principal office;

5. The address of the proposed registered office of the foreign corporation in this Commonwealth (including both (i) the post-office address with street and number, if any, and (ii) the name of the county or city in which it is located) and the name of its proposed registered agent in this Commonwealth at such address and that the registered agent is either (a) an individual who is a resident of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar or (b) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in this Commonwealth, the business office of which is identical with the registered office;

6. The names and usual business addresses of the current directors and officers of the foreign corporation; and

7. The number of shares the corporation is authorized to issue, itemized by classes and series, if any, within a class.

B. The foreign corporation shall deliver with the completed application a copy of its 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 law it is incorporated.

C. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of authority to transact business in this Commonwealth.