

# VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

## CHAPTER 607

*An Act to amend and reenact §§ 13.1-831, 13.1-888, 13.1-889, 13.1-895, 13.1-898, 13.1-898.1, and 13.1-921 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 13.1-887.1 and 13.1-941.01, and to repeal § 13.1-941 of the Code of Virginia, relating to the Virginia Nonstock Corporation Act.*

[S 242]

Approved April 6, 2002

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

**1. That §§ 13.1-831, 13.1-888, 13.1-889, 13.1-895, 13.1-898, 13.1-898.1, and 13.1-921 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 13.1-887.1 and 13.1-941.01 as follows:**

§ 13.1-831. Registered name.

A. A foreign corporation may register its corporate name, or its corporate name with any addition required by ~~§ 13.1-919~~ 13.1-924, if the name is distinguishable upon the records of the Commission from the corporate names that are not available under subsection B of § 13.1-829.

B. A foreign corporation registers its corporate name, or its corporate name with any additions required by ~~§ 13.1-919~~ 13.1-924, by:

1. Filing with the Commission (i) an application setting forth the name of the corporation, or its corporate name with any addition required by ~~§ 13.1-919~~ 13.1-924, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and (ii) a certificate setting forth that such corporation is in good standing (or a document of similar import) from the state or country of incorporation, executed by the official who has custody of the records pertaining to corporations; and

2. Paying to the Commission a registration fee of twenty dollars. Except as provided in subsection E of this section, registration is effective for one year after the date an application is filed.

C. If the Commission finds that the corporate name applied for is available, it shall register the name for the applicant's exclusive use.

D. A foreign corporation whose registration is effective may renew it for the succeeding year by filing with the Commission, during the sixty-day period preceding the date of expiration of the registration, a renewal application which complies with subsection B of this section, and by paying a renewal fee of twenty dollars. The renewal application becomes effective when filed in accordance with this section and, except as provided in subsection E of this section, renews the registration for one year after the date the registration would have expired if such subsequent renewal of the registration had not occurred.

E. A foreign corporation whose registration is effective may thereafter obtain a certificate of authority to transact business in this Commonwealth under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this Commonwealth. The registration terminates when the domestic corporation is incorporated or the foreign corporation obtains a certificate of authority to transact business in this Commonwealth or consents to the authorization of another foreign corporation to transact business in this Commonwealth under the registered name.

F. A foreign corporation which has in effect a registration of its corporate name may release such name by filing a notice of release of a registered name with the Commission and by paying a fee of ten dollars.

§ 13.1-887.1. *Amendment prior to organization.*

*When a corporation has not yet completed its organization and there are no members or directors, one or more amendments to the corporation's articles of incorporation may be adopted by a majority of the incorporators.*

§ 13.1-888. 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. The date of each amendment's adoption;
4. If an amendment was adopted:

~~by a. By the incorporators or board of directors without member action, a statement to that effect and that, including the reason director approval and member action was approval were not required; and a statement of the fact that the amendment was approved by a majority of the incorporators; and~~

*b. By the board of directors without member approval, a statement to that effect, including the reason member approval was not required, and a statement of the fact that the amendment received the vote of at least two-thirds of the directors in office;*

5. If an amendment was approved by the members, either:

a. A statement that the amendment was adopted by unanimous consent of the members; or

b. A statement that the amendment was proposed by the board of directors and submitted to the members in accordance with this Act and a statement of:

(1) The existence of a quorum of each voting group entitled to vote separately on the amendment; and

(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.

§ 13.1-889. Restated articles of incorporation.

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

B. The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring member approval, it shall be adopted as provided in § 13.1-886. *If the restatement includes an amendment that does not require member approval, it shall be adopted as provided in § 13.1-885.*

C. If the board of directors submits a restatement for member action, the corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § 13.1-842. 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 member approval~~ and, if it does not, that the board of directors adopted the restatement; ~~or~~

2 4. *If the restatement contains an amendment to the articles not requiring member approval, the information required by subdivision A 4 of § 13.1-888; and*

5. If the restatement contains an amendment to the articles requiring member approval, the information required by *subdivision A 5 of § 13.1-888.*

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.

§ 13.1-895. Action on plan by directors or members.

A. Where the members of any merging corporation have voting rights, a plan of merger shall be adopted in the following manner:

1. The board of directors of such corporation party to the merger, after adopting a plan of merger, shall submit the plan of merger, except as provided in subdivision 7 of this subsection, for approval by its members.

2. For a plan of merger to be approved:

a. The board of directors shall recommend the plan of merger to the members unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the members with the plan; and

b. The members shall approve the plan as provided in subdivision 5 of this subsection.

3. The board of directors may condition its submission of the proposed merger on any basis.

4. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § 13.1-842. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy of the plan.

5. Unless this chapter or the board of directors, acting pursuant to subdivision 3 of this subsection, requires a greater vote, the plan of merger to be authorized shall be approved by each voting group entitled to vote on the plan by more than two-thirds of all the votes cast on the plan by that voting group at a meeting at which a quorum of the voting group exists. 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.

6. Voting by a class of members as a separate voting group is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would entitle the class to vote as a separate voting group on the proposed amendment under § 13.1-887.

7. Action by the members of the surviving corporation on a plan of merger is not required if:

a. The articles of incorporation of the surviving corporation will not differ, ~~except for amendments enumerated in § 13.1-885~~, from its articles before the merger; and

b. Each member of the surviving corporation will retain the identical designation, preferences, limitations, and relative rights, immediately after the effective date of the merger as held before.

B. Where any merging corporation has no members, or no members having voting rights, a plan of merger shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

C. Any plan of merger may contain a provision that the board of directors of each corporation party to the merger may amend the plan at any time prior to issuance of the certificate of merger. Where a plan of merger is required to be submitted to the members for their approval an amendment made subsequent to the submission of the plan to the members of any corporation party to the merger shall not (i) alter or change any of the terms and conditions of the plan if such alteration or change would adversely affect the members of any class of such corporation, or (ii) alter or change any term of the articles of incorporation of any corporation whose members shall approve the plan of merger. If articles of merger already have been filed with the Commission, amended articles of merger shall be filed with the Commission prior to the issuance of the certificate of merger.

D. Unless a plan of merger prohibits abandonment of the merger without member approval, after the merger has been authorized, and at any time prior to issuance of the certificate of merger, the merger may be abandoned, subject to any contractual rights, without further member 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 of each corporation party to the merger. Written notice of abandonment shall be filed with the Commission prior to the issuance of the certificate of merger.

§ 13.1-898. Merger with foreign corporation.

A. One or more foreign corporations may merge with one or more domestic corporations if:

1. The merger is permitted by the laws of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

2. The foreign corporation complies with ~~§ 13.1-899~~ 13.1-896 if it is the surviving corporation of the merger; and

3. Each domestic corporation complies with the applicable provisions of §§ 13.1-894 and 13.1-895 and the surviving corporation of the merger complies with § 13.1-896.

B. Upon a merger's taking effect, the surviving foreign corporation in the merger is deemed to appoint the clerk of the Commission as its agent for service of process in a proceeding to enforce any obligation of each domestic corporation party to the merger.

C. No corporation that is required by law to be a domestic corporation may, by merger, cease to be a domestic corporation, but every such corporation, even though a corporation of such other state, the United States or another country, shall also be a domestic corporation of this Commonwealth.

§ 13.1-898.1. Merger of nonstock and stock corporations.

A. One or more nonstock corporations incorporated under this chapter may merge with one or more stock corporations incorporated under Chapter 9 (§ 13.1-601 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 or membership interests of any such nonstock 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 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 nonstock corporation, shall be adopted and approved in the manner provided in this article and, in the case of each stock corporation, shall be adopted and approved in the manner provided in Article 12 (§ 13.1-716) of Chapter 9 of this title.

F. After a plan of merger is approved by the shareholders and members, or adopted by the board of directors if shareholders 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 the Virginia Stock Corporation Act (§ 13.1-601 et seq.), 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 this chapter, 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 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.

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.

§ 13.1-921. 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 ~~§ 13.1-829~~ 13.1-924 from using its own name in this Commonwealth, a designated name that satisfies the requirements of subsection B of § 13.1-924.

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

3. The date of incorporation and the period of duration of the corporation.

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.

B. The foreign corporation shall deliver to the Commission with the completed application a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper official having custody of corporate records in the state or country under whose laws it is incorporated.

C. If the Commission finds that such 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.

*Article 17.*

*Conversion to a Stock Corporation.*

*§ 13.1-941.01. Conversion to a domestic stock corporation.*

*A domestic nonstock corporation may convert to a domestic stock corporation by filing with the Commission articles of amendment to its articles of incorporation, approved in accordance with § 13.1-885 or § 13.1-886.*

**2. That § 13.1-941 of the Code of Virginia is repealed.**