

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 374

An Act to amend and reenact §§ 13.1-815, 13.1-815.1, and 13.1-816 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 10 of Title 13.1 an article numbered 11.1, consisting of sections numbered 13.1-898.2 through 13.1-898.7, relating to the domestication of nonstock corporations; fees.

[S 880]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-815, 13.1-815.1, and 13.1-816 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding in Chapter 10 of Title 13.1 an article numbered 11.1, consisting of sections numbered 13.1-898.2 through 13.1-898.7, as follows:

§ 13.1-815. 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 filing fees, the 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 § 13.1-936, until all fees, charges, 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 § 13.1-913 without requiring prepayment of any such assessment, but 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, except as provided hereinafter.

Any domestic corporation which has ceased to exist because of the issuance of a certificate of termination of corporate existence *or certificate of incorporation surrender* or any foreign corporation which has obtained a certificate of withdrawal, effective prior to its annual report due date pursuant to subsection C of § 13.1-936 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 § 13.1-936 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 above specified remaining unpaid. Registration fee assessments that have been paid shall not be refunded.

§ 13.1-815.1. Charter and entrance fees for corporations.

A. Every domestic corporation, upon the granting of its charter, shall pay a ~~fifty dollar~~ \$50 fee into the state treasury, and every foreign corporation without capital stock shall pay ~~fifty dollars~~ \$50 into the state treasury for its certificate of authority to conduct its affairs in this Commonwealth.

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. 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.

§ 13.1-816. Fees for filing documents or issuing certificates.

The Commission shall charge and collect the following fees:

A 1. For filing any one of the following, the fee shall be ~~twenty-five dollars~~ \$25:

1 a. Articles of incorporation, *domestication, or incorporation surrender.*

2 b. Articles of amendment or restatement.

3 c. Articles of merger.

4 d. Articles of correction.

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

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

7 g. 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 h. A copy of articles of merger or consolidation of a foreign corporation holding a certificate of

authority to transact business in this Commonwealth.

~~B~~ 2. For filing any one of the following, the fee shall be ~~ten dollars~~ \$10:

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

~~C~~ 3. For issuing a certificate of change of name the fee shall be ~~five dollars~~ \$5.

Article 11.1.

Domestication.

§ 13.1-898.2. 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.

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. Where a plan of domestication 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 the corporation shall not 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.

§ 13.1-898.3. Action on plan of domestication by a domestic corporation.

A. When the members of a domestic corporation have voting rights, a plan of domestication shall be adopted in the following manner:

1. The board of directors of the corporation shall adopt the plan of domestication.
2. After adopting a plan of domestication, the board of directors shall submit the plan of domestication for approval by the members.

3. For a plan of domestication to be approved:

a. The board of directors shall recommend the plan 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 6 of this subsection.

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

5. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § 13.1-842 at which the plan of domestication is to be submitted for approval. The notice shall also state that a purpose 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 of this subsection, requires a greater vote, the plan of domestication 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 subdivision 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.

7. Voting by a class of members as a separate voting group is required on a plan of domestication 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.

B. When a domestic corporation has no members, or no members have voting rights, a plan of domestication 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.

§ 13.1-898.4. 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 § 13.1-829;

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 § 13.1-806.

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 14 (§ 13.1-919 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.

§ 13.1-898.5. 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. Where the members of the corporation have voting rights, either:

a. A statement that the plan 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;

6. Where the corporation has no members, or 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;

7. 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;

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

9. 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 30 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 § 13.1-921 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.

§ 13.1-898.6. 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 member or director 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.

§ 13.1-898.7. Abandonment of domestication.

A. Unless a plan of domestication of a domestic corporation prohibits abandonment of the domestication without member 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 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.

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.