

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 598

An Act to amend and reenact §§ 13.1-722.10 and 13.1-722.12 of the Code of Virginia, relating to business entity conversions.

[H 1830]

Approved March 18, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-722.10 and 13.1-722.12 of the Code of Virginia are amended and reenacted as follows:

§ 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. *As a separate attachment to the plan*, the full text, ~~as they will be in effect immediately after consummation of the conversion,~~ of the articles of organization of the surviving entity *as they will be in effect immediately after consummation of the conversion.*

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. *As a separate attachment to the plan*, 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.

§ 13.1-722.12. 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 *that comply with the requirements of Chapter 12 (§ 13.1-1000 et seq.) of this title*, 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 *this chapter*, 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.