

# VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

## CHAPTER 728

*An Act to amend and reenact §§ 13.1-603, 13.1-610, 13.1-654, 13.1-655, 13.1-657, and 13.1-723 of the Code of Virginia, relating to the Virginia Stock Corporation Act; notices to shareholders; public corporations.*

[S 860]

Approved March 19, 2003

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

**1. That §§ 13.1-603, 13.1-610, 13.1-654, 13.1-655, 13.1-657, and 13.1-723 of the Code of Virginia are amended and reenacted as follows:**

§ 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.

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section. For purposes of §§ 13.1-657 and 13.1-685, a written consent and the signing thereof may be accomplished by one or more electronic transmissions.

"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.

*"Public corporation" means a corporation that has 300 or more shareholders.*

"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.

§ 13.1-610. Notice.

For purposes of this chapter:

A. Notice shall be in writing except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.

B. Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where the notice is intended to be given; or by radio, television or other form of public broadcast communication in the area where the notice is intended to be given.

C. Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

D. Written notice to a domestic or foreign corporation, authorized to transact business in this Commonwealth, may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet filed an annual report, in its application for a certificate of authority.

E. Except as provided in subdivisions B and C of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

1. When received;
2. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed;
3. On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

F. Oral notice is effective when communicated if communicated in a comprehensible manner.

G. When this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern.

H. Without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by the corporation, under any provision of this chapter, the articles of incorporation or the bylaws, shall be effective if given by a form of electronic transmission consented to by the shareholder to whom the notice is given. Any such consent shall be revocable by the shareholder by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given pursuant to this subsection shall be deemed given: (a) if by facsimile telecommunication, when directed to a number at which the shareholder has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice; (c) if by a posting on an electronic network together with separate notice to the shareholder of such specific posting when such notice is directed to the record address of the shareholder or to such other address at which the shareholder has consented to receive notice, upon the later of such posting or the giving of such separate notice; and (d) if by any other form of electronic transmission, when consented to by the shareholder. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein. This subsection shall not apply to subsection D of § 13.1-642.

*I. Without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by a public corporation, under any provision of this chapter, the articles of incorporation or the bylaws, shall be effective if given in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.*

#### § 13.1-654. Annual meeting.

A. A corporation shall hold annually at a time stated in or fixed in accordance with the bylaws a meeting of shareholders, except that ~~if the articles of incorporation or bylaws of a corporation registered under the Investment Company Act of 1940 so provide, the corporation is not required to hold an annual meeting in any year in which the election of directors is not required to be held under the Investment Company Act of 1940~~ *unless the articles of incorporation or bylaws of the corporation require an annual meeting to be held.*

B. Annual shareholders' meetings may be held at such place, in or out of this Commonwealth, as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

*C. If the articles of incorporation or bylaws so provide, shareholders may participate in an annual meeting by use of any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.*

D. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

#### § 13.1-655. Special meeting.

A. A corporation shall hold a special meeting of shareholders:

1. On call of the chairman of the board of directors, the president, the board of directors, or the person or persons authorized to do so by the articles of incorporation or bylaws; or
2. In the case of corporations having ~~thirty-five~~ 35 or fewer shareholders of record, if the holders of at least ~~twenty~~ 20 percent of all votes entitled to be cast on any issue proposed to be considered at the special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

B. The articles of incorporation may provide for an increase or decrease in the percentage stated in paragraph 2 of subsection A of this section.

C. If not otherwise fixed under § 13.1-656 or § 13.1-660, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

D. Special shareholders' meetings may be held at such place in or out of this Commonwealth as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

*E. If the articles of incorporation or bylaws so provide, shareholders may participate in a special*

*shareholders' meeting by use of any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.*

F. Only business within the purpose or purposes described in the meeting notice required by subsection C of § 13.1-658 may be conducted at a special shareholders' meeting.

§ 13.1-657. Action without meeting.

A. 1. Action required or permitted by this Act to be taken at a shareholders' meeting may be taken without a meeting and without prior notice, if the action is taken by all the shareholders entitled to vote on the action, in which case no action by the board of directors shall be required.

2. Notwithstanding subdivision 1, if so provided in the articles of incorporation of a corporation that is not a public corporation at the time such action is taken, action required or permitted by this Act to be taken at a shareholders' meeting may be taken without a meeting and without prior notice, if the action is taken by shareholders who would be entitled to vote at a meeting of holders of outstanding shares having voting power to cast not less than the minimum number (or numbers, in the case of voting by groups) of votes that would be necessary to authorize or take the action at a meeting at which all shareholders entitled to vote thereon were present and voted.

3. The action shall be evidenced by one or more written consents describing the action taken, signed by the shareholders entitled to take such action without a meeting and delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records. Any action taken by written consent shall be effective according to its terms when the requisite consents are in possession of the corporation. A shareholder may withdraw consent only by delivering a written notice of withdrawal to the corporation prior to the time that the requisite consents are in the possession of the corporation. Action taken under this section is effective as of the date specified therein provided the consent states the date of execution by each shareholder.

B. If not otherwise determined under § 13.1-660, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection A of this section.

C. A consent signed under this section has the effect of a vote of voting shareholders at a meeting and may be described as such in any document filed with the Commission under this chapter.

D. If action is to be taken under this section by less than all of the shareholders entitled to vote on the action, the corporation shall give to all shareholders on the record date who are entitled to vote on the matter written notice of the proposed action not less than five days before the action is taken. The notice shall contain or be accompanied by the same material that under this Act would have been required to be sent to shareholders in a notice of meeting at which the action would have been submitted to the shareholders for action.

E. ~~"Public corporation" means a corporation that has 300 or more shareholders.~~

F. If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the action not less than five days before the action is taken. The notice shall contain or be accompanied by the same material that under this Act would have been required to be sent to nonvoting shareholders in a notice of meeting at which the action would have been submitted to the shareholders for action.

§ 13.1-723. Sale of assets in regular course of business, mortgage of assets and transfers to subsidiaries.

A. A corporation may, under the terms and conditions and for the consideration determined by the board of directors:

1. Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business;

2. Mortgage, pledge, or dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

3. Transfer any or all of its property to a corporation all the shares of which are owned by the corporation, provided that a corporation that ~~does not have more than 300 shareholders of record~~ is not a public corporation may not make transfers pursuant to this subdivision.

B. Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection A of this section is not required.