

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 330

An Act to amend and reenact §§ 13.1-639, 13.1-675, and 13.1-706 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 13.1-690.1, relating to the Virginia Stock Corporation Act; corporations registered as an investment company under the Investment Company Act of 1940.

[S 592]

Approved March 30, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-639, 13.1-675, and 13.1-706 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 13.1-690.1, as follows:

§ 13.1-639. Terms of class or series determined by board of directors.

A. If the articles of incorporation so provide, the board of directors, without shareholder action, may, by adoption of an amendment of the articles of incorporation:

1. Classify any unissued shares into one or more classes or into one or more series within one or more classes;

2. Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

3. Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within one or more classes.

B. If the board of directors acts pursuant to subsection A, it shall determine the terms, including the preferences, rights and limitations, to the same extent permitted under § 13.1-638, of:

1. Any class of shares before the issuance of any shares of that class, or

2. Any series within a class before the issuance of any shares of that series.

C. ~~When the board of directors has adopted an amendment of the articles of incorporation pursuant to subsection A, the corporation shall file with the Commission articles of amendment that set forth:~~

~~1. The name of the corporation;~~

~~2. The text of the amendment determining the terms of the class or classes or series of shares;~~

~~3. The date it was adopted; and~~

~~4. A statement that the amendment was duly adopted by the board of directors.~~

If the Commission finds that the articles comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment. Shares of any class or series that are the subject of the articles of amendment shall not be issued until the certificate of amendment is effective.

~~D. Unless the articles of incorporation otherwise provide, the board of directors, without shareholder action, may, by adoption of an amendment of the articles of incorporation, delete from the articles of incorporation any provisions originally adopted by the board of directors without shareholder action fixing the preferences, limitations and rights of any class of shares or series within a class, provided there are no shares of such class or series then outstanding. Such deletion shall be set forth in articles of amendment, which may become effective without shareholder action.~~

D. Unless the articles of incorporation otherwise provide, the board of directors of a corporation that is registered as an open-end management investment company under the Investment Company Act of 1940, without shareholder action, may, by adoption of an amendment of the articles of incorporation:

1. Classify any unissued shares into one or more classes or into one or more series within one or more classes; or

2. Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

3. Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within one or more classes.

E. When the board of directors has adopted an amendment of the articles of incorporation pursuant to subsection A, C or D, the corporation shall file with the Commission articles of amendment that set forth:

1. The name of the corporation;

2. The text of the amendment, including any determination made pursuant to subsection B;

3. The date it was adopted; and

4. A statement that the amendment was duly adopted by the board of directors.

If the Commission finds that the articles comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment. Shares of any class or series that are the subject of the articles of amendment shall not be issued until the certificate of amendment is effective.

§ 13.1-675. Number and election of directors.

A. A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the bylaws, or if not specified in or fixed in accordance with the bylaws, with the number specified in or fixed in accordance with the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation.

B. The shareholders may adopt a bylaw fixing the number of directors and may direct that such bylaw not be amended by the board of directors. If a bylaw states a fixed number of directors and the board of directors has the right to amend the bylaw, it may by amendment to the bylaw increase or decrease by 30 percent or less the number of directors last elected by the shareholders, or, if the directors' terms are staggered pursuant to § 13.1-678, the number of directors of all classes immediately following the most recent election of directors by the shareholders, but only the shareholders may increase or decrease the number by more than 30 percent. *The restrictions on the increase or decrease in the number of directors set forth in this subsection shall not apply to a corporation registered as an open-end management investment company registered under the Investment Company Act of 1940.*

C. The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or by the board of directors. After shares are issued, only the shareholders may change the range for the size of the board of directors or change from a fixed to a variable-range size board or vice versa.

D. Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under § 13.1-678.

E. No individual shall be named or elected as a director without his prior consent.

§ 13.1-690.1. Director of open-end management investment company deemed independent and disinterested.

A director of a corporation that is an open-end management investment company, as defined by the Investment Company Act of 1940, who with respect to the corporation is not an interested person, as defined by the Investment Company Act of 1940, shall be deemed to be independent and disinterested when making any determination or taking any action as a director.

§ 13.1-706. Amendment of articles of incorporation by directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

1. To delete the names and addresses of the initial directors;
2. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Commission;
3. If the corporation has only one class of shares outstanding:
 - a. To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or
 - b. To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;
4. To eliminate or change the par value of the shares of any class or series;
5. To change the corporate name by substituting the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co." or "ltd.," or a similar word or abbreviation in the name, or by adding, deleting, or changing a geographic attribution for the name; or
6. To make any other change expressly permitted by this chapter to be made without shareholder action; or

7. If the corporation is registered as an open-end management investment company under the Investment Company Act of 1940, to increase or decrease the aggregate number of shares or classes of shares or series of shares within any class that the corporation is authorized to issue.