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HOUSE BILL NO. 887

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 17, 2006)

(Patron Prior to Substitute—Delegate Kilgore)

A BILL to amend and reenact §§ 13.1-603, 13.1-609, 13.1-716, 13.1-718, 13.1-754, 13.1-766.1, 13.1-809, 13.1-916, and 13.1-928.1 of the Code of Virginia, relating to corporate mergers and reinstatements.

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-603, 13.1-609, 13.1-716, 13.1-718, 13.1-754, 13.1-766.1, 13.1-809, 13.1-916, and 13.1-928.1 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 *consolidation, serial designation, reduction, correction, and merger*, except for a certificate of merger with a subsidiary pursuant to § 13.1-719; ~~consolidation, serial designation, reduction or correction~~ that does not include an amendment to the survivor's articles of incorporation. It excludes articles of exchange filed by an acquiring corporation. When the articles of incorporation have been restated pursuant to any articles of amendment, domestication, or merger, it includes only the restated articles of incorporation, including any articles of serial designation, without the accompanying articles of amendment, domestication, 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 chapter or existing pursuant to the laws of the Commonwealth on January 1, 1986, or which, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of the Commonwealth, even though also being a corporation organized under laws other than the laws of the Commonwealth, or which has become a domestic corporation of the 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" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission.

"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.

"Disinterested director" means, except with respect to Article 14 (§ 13.1-725 et seq.) of this chapter, a director who, at the time action is to be taken under § 13.1-672.4, 13.1-691, 13.1-699 or 13.1-701, does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial, financial, professional, employment or other relationship with a person who has a financial interest in the matter, either of which would reasonably be expected to affect adversely the objectivity of the director when participating in the action, and if the action is to be taken under § 13.1-699 or 13.1-701, is also not a party to the proceeding. The presence of one or more of the following circumstances shall not by itself prevent a person from being a disinterested director: (i) nomination or election of the director to the current board by any person, acting alone or participating with others, who is so interested in the matter; (ii) service as a director of another corporation of which an interested person is also a director; or (iii) at the time action is to be taken under § 13.1-672.4, status as a named defendant, as a director against whom action is demanded, or as a director who approved the act being challenged.

"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

60 acquisition is effected using the proceeds of insurance on the life of such deceased shareholder and the
61 board of directors approved the policy and the terms of the redemption prior to the shareholder's death.
62 "Domestic business trust" has the same meaning as specified in § 13.1-1201.
63 "Domestic limited liability company" has the same meaning as specified in § 13.1-1002.
64 "Domestic limited partnership" has the same meaning as specified in § 50-73.1.
65 "Domestic nonstock corporation" has the same meaning as "domestic corporation" as specified in
66 § 13.1-803.
67 "Domestic partnership" means an association of two or more persons to carry on as co-owners a
68 business for profit formed under § 50-73.88, or predecessor law of the Commonwealth, and includes, for
69 all purposes of the laws of the Commonwealth, a registered limited liability partnership.
70 "Effective date of notice" is defined in § 13.1-610.
71 "Electronic transmission" means any form of communication, not directly involving the physical
72 transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient
73 thereof, and that may be directly reproduced in paper form by such a recipient through an automated
74 process. Any term used in this definition that is defined in § 59.1-480 shall have the meaning set forth
75 in such section.
76 "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonstock
77 corporation.
78 "Eligible interests" means interests or memberships.
79 "Employee" includes, unless otherwise provided in the bylaws, an officer but not a director. A
80 director may accept duties that make him also an employee.
81 "Entity" includes any domestic or foreign corporation; any domestic or foreign nonstock corporation;
82 any domestic or foreign unincorporated entity; any estate or trust; and any state, the United States and
83 any foreign government.
84 "Foreign business trust" has the same meaning as specified in § 13.1-1201.
85 "Foreign corporation" means a corporation authorized by law to issue shares, organized under laws
86 other than the laws of the Commonwealth.
87 "Foreign limited liability company" has the same meaning as specified in § 13.1-1002.
88 "Foreign limited partnership" has the same meaning as specified in § 50-73.1.
89 "Foreign nonstock corporation" has the same meaning as "foreign corporation" as specified in
90 § 13.1-803.
91 "Foreign partnership" means an association of two or more persons to carry on as co-owners of a
92 business for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and
93 includes, for all purposes of the laws of the Commonwealth, a foreign registered limited liability
94 partnership.
95 "Foreign registered limited liability partnership" has the same meaning as specified in § 50-73.79.
96 "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed
97 by an organic law of a jurisdiction other than the Commonwealth.
98 "Government subdivision" includes authority, county, district, and municipality.
99 "Includes" denotes a partial definition.
100 "Individual" means a natural person.
101 "Interest" means either or both of the following rights under the organic law of an unincorporated
102 entity:
103 1. The right to receive distributions from the entity either in the ordinary course or upon liquidation;
104 or
105 2. The right to receive notice or vote on issues involving its internal affairs, other than as an agent,
106 assignee, proxy or person responsible for managing its business and affairs.
107 "Means" denotes an exhaustive definition.
108 "Membership" means the rights of a member in a domestic or foreign nonstock corporation or
109 limited liability company.
110 "Notice" is defined in § 13.1-610.
111 "Organic document" means the document, if any, that is filed of public record to create an
112 unincorporated entity. Where an organic document has been amended or restated, the term means the
113 organic document as last amended or restated.
114 "Organic law" means the statute governing the internal affairs of a domestic or foreign corporation or
115 eligible entity.
116 "Person" includes an individual and an entity.
117 "Principal office" means the office, in or out of the Commonwealth, where the principal executive
118 offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or
119 out of the Commonwealth, so designated by the board of directors. The designation of the principal
120 office in the most recent annual report filed pursuant to § 13.1-775 shall be conclusive for purposes of
121 this chapter.

"Proceeding" includes civil suit and criminal, administrative, and investigatory action conducted by a governmental agency.

"Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

"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 and their shareholdings for purposes of this chapter. The determination shall be made as of the close of business at the principal office of the corporation on the record date unless another time for doing so is specified when the record date is fixed.

"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.

"Shares" means the units into which the proprietary interests in a corporation are divided.

"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.

"Subsidiary" means, as to any corporation, any other corporation of which it owns, directly or indirectly, voting shares entitled to cast a majority of the votes entitled to be cast generally in an election of directors of such other corporation.

"Unincorporated entity" or "domestic unincorporated entity" means a domestic partnership, limited liability company, limited partnership or business trust.

"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.

"Voting power" means the current power to vote in the election of directors.

§ 13.1-609. Certificate of good standing.

A. Anyone may apply to the Commission to furnish a certificate of good standing for a domestic or foreign corporation.

B. The certificate shall state that the corporation is in good standing in this Commonwealth and shall set forth:

1. The domestic corporation's corporate name or the foreign corporation's corporate name used in this Commonwealth;

2. That (i) the domestic corporation is duly incorporated under the law of this Commonwealth, the date of its incorporation, and the period of its duration if less than perpetual; or that (ii) the foreign corporation is authorized to transact business in the Commonwealth; and

3. If requested, a list of all certificates relating to articles filed with the Commission that have been issued by the Commission with respect to such corporation and their respective effective dates.

C. A domestic corporation or a foreign corporation authorized to transact business in this Commonwealth shall be deemed to be in good standing if:

1. All fees, fines, penalties and interest assessed, imposed, charged or to be collected by the Commission pursuant to this chapter have been paid;

2. An annual report required by § 13.1-775 has been delivered to and accepted by the Commission; and

3. No certificate of dissolution ~~or~~, certificate of withdrawal, or order of reinstatement prohibiting the domestic corporation from engaging in business until it changes its corporate name has been issued or such certificate or prohibition no longer is in effect.

D. The certificate may state any other facts of record in the office of the clerk of the Commission that may be requested by the applicant.

E. Subject to any qualification stated in the certificate, a certificate of good standing issued by the Commission may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in the Commonwealth.

§ 13.1-716. Merger.

A. One or more domestic corporations may merge with one or more domestic or foreign corporations or eligible entities pursuant to a plan of merger, or two or more foreign corporations or domestic or foreign eligible entities may merge into a new domestic corporation to be created in the merger in the

183 manner provided in this chapter.

184 B. A foreign corporation or a foreign eligible entity may be a party to a merger with a domestic
185 corporation, or may be created pursuant to the terms of the plan of merger, only if the merger is
186 permitted by the laws under which the foreign corporation or eligible entity is organized or by which it
187 is governed.

188 C. The plan of merger shall include:

189 1. The name of each domestic or foreign corporation or eligible entity that will merge and the name
190 of the domestic or foreign corporation or eligible entity that will be the survivor of the merger;

191 2. The terms and conditions of the merger;

192 3. The manner and basis of converting the shares of each merging domestic or foreign corporation
193 and eligible interests of each merging domestic or foreign eligible entity into shares or other securities,
194 eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other
195 property or any combination of the foregoing;

196 4. The manner and basis of converting any rights to acquire the shares of each merging domestic or
197 foreign corporation and eligible interests of each merging domestic or foreign eligible entity into shares
198 or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible
199 interests, cash, or other property or any combination of the foregoing;

200 5. The articles of incorporation of any domestic or foreign corporation or nonstock corporation, or
201 the organic document of any domestic or foreign unincorporated entity, to be created by the merger, or
202 if a new domestic or foreign corporation or nonstock corporation or unincorporated entity is not to be
203 created by the merger, any amendments to the survivor's articles of incorporation or organic document;
204 and

205 6. Any other provisions required by the laws under which any party to the merger is organized or by
206 which it is governed, or by the articles of incorporation or organic document of any such party.

207 D. Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the
208 plan in accordance with subsection L of § 13.1-604.

209 E. The plan of merger may also include a provision that the plan may be amended prior to the
210 effective date of the certificate of merger, but if the shareholders of a domestic corporation that is a
211 party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent
212 to approval of the plan by such shareholders the plan may not be amended to change:

213 1. The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire
214 shares, other securities or eligible interests, cash or other property to be received under the plan by the
215 shareholders of or owners of eligible interests in any party to the merger;

216 2. The articles of incorporation of any domestic or foreign corporation or nonstock corporation, or
217 the organic document of any unincorporated entity, that will survive or be created as a result of the
218 merger, except for changes permitted by § 13.1-706; or

219 3. Any of the other terms or conditions of the plan if the change would adversely affect such
220 shareholders in any material respect.

221 F. 1. *One or more domestic corporations may merge pursuant to this section into another domestic*
222 *corporation if the articles of incorporation of each of them could lawfully contain all the corporate*
223 *powers and purposes of all of them.*

224 2. Any corporation authorized by its articles of incorporation to engage in a special kind of business
225 enumerated in § 13.1-620 may be merged with another corporation authorized by its articles of
226 incorporation to engage in the same special kind of business, including mergers authorized under
227 § 6.1-194.40, whether or not either or both of such corporations are actually engaged in the transaction
228 of such business, and the shareholders of the corporations parties to the merger may receive shares of a
229 corporation not authorized by its articles of incorporation to engage in such special kind of business.

230 § 13.1-718. Action on a plan of merger or share exchange.

231 A. In the case of a domestic corporation that is a party to a merger or share exchange:

232 1. The plan of merger or share exchange shall be adopted by the board of directors.

233 2. Except as provided in subsection F and in § 13.1-719, after adopting the plan of merger or share
234 exchange the board of directors shall submit the plan to the shareholders for their approval. The board
235 of directors shall also transmit to the shareholders a recommendation that the shareholders approve the
236 plan, unless the board of directors makes a determination that because of conflicts of interest or other
237 special circumstances it should not make such a recommendation, in which case the board of directors
238 must transmit to the shareholders the basis for that determination.

239 B. The board of directors may condition its submission of the plan of merger or share exchange to
240 the shareholders on any basis.

241 C. If the plan of merger or share exchange is required to be approved by the shareholders, and if the
242 approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not
243 entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The
244 notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and

must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing domestic or foreign corporation or eligible entity and its shareholders are to receive ~~capital stock shares~~ or other interests *or the right to receive shares or other interests* in the surviving corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organic document of that corporation or eligible entity. If the corporation is to be merged into a domestic or foreign corporation or eligible entity that is to be created pursuant to the merger and its shareholders are to receive ~~capital stock shares~~ or other interests *or the right to receive shares or other interests* in the surviving corporation or eligible entity, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organic document of the new domestic or foreign corporation or eligible entity.

D. Unless the articles of incorporation, or the board of directors acting pursuant to subsection B, require a greater vote, the plan of merger or share exchange 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 entitled to be cast by that voting group. 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 transaction at a meeting at which a quorum of the voting group exists.

E. Separate voting by voting groups is required:

1. On a plan of merger by each class or series of shares that:

- a. Is to be converted under the plan of merger into shares, other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property or any combination of the foregoing; or

- b. Would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under § 13.1-708;

2. On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

3. On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

F. Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

1. The corporation will survive the merger or is the acquiring corporation in a share exchange;

2. Except for amendments permitted by § 13.1-706, its articles of incorporation will not be changed; *and*

3. Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and rights immediately after the effective date of the merger or share exchange; *and*

4. *With respect to shares of the surviving corporation in a merger that are entitled to vote unconditionally in the election of directors, the number of shares outstanding immediately after the merger, plus the number of shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of options, rights, and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of shares of the surviving corporation outstanding immediately before the merger.*

G. If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution, by each shareholder, of a separate written consent to become subject to such owner liability.

§ 13.1-754. Reinstatement of a corporation that has ceased to exist.

A corporation that has ceased to exist may apply to the Commission for reinstatement within five years thereafter unless the corporate existence was terminated by order of the Commission (i) upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law or (ii) *entered pursuant to § 13.1-749 and the circuit court's decree directing dissolution contains no provision for reinstatement of corporate existence.* The Commission shall enter an order reinstating the corporate existence upon receiving an annual report together with payment of a reinstatement fee of \$100 plus all registration fees and penalties that were due before the corporation ceased to exist and that would have become due thereafter if the corporation had not ceased to exist. An annual report need not be submitted if such a report previously was filed during the calendar year in which reinstatement is sought. The application for reinstatement may be by letter signed by an officer or director of the corporation, or may be by affidavit signed by an agent of any shareholder's interests stating that after diligent search by such agent no officer or director can be found. The Commission shall assess the

amounts that would have become due. Upon the entry by the Commission of an order of reinstatement, the corporate existence shall be deemed to have continued from the date of termination of corporate existence, and any liability incurred by the corporation or a director, officer, or other agent after termination of corporate existence and before the reinstatement shall be determined as if the termination of corporate existence had never occurred. If the name of a corporation that has ceased to exist is not distinguishable upon the records of the Commission, the reinstated corporation shall not engage in business until it has amended its articles of incorporation to change its name to a name that is distinguishable upon the records of the Commission.

§ 13.1-766.1. Merger of foreign corporation authorized to transact business in Commonwealth.

A. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it is incorporated, and such corporation is the surviving entity of the merger, it shall, within 30 days after such merger becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose laws such merger was effected; *however; the filing shall not be required when a foreign corporation merges with a domestic corporation or eligible entity, the foreign corporation's articles of incorporation are not amended by said merger, and the articles or statement of merger filed on behalf of the domestic corporation or eligible entity pursuant to § 13.1-720, 13.1-1072, 13.1-1261, 50-73.48:3, or 50-73.131 contains a statement that the merger is permitted under the laws of the state or other jurisdiction in which the foreign corporation is incorporated and that the foreign corporation has complied with that law in effecting the merger.*

B. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under the laws of which it is incorporated, and such corporation is not the surviving entity of the merger or, whenever such a foreign corporation is a party to a consolidation so permitted, the surviving or resulting domestic or foreign corporation, limited liability company, business trust, partnership or limited partnership shall, if not continuing to transact business in the Commonwealth, within 30 days after such merger or consolidation becomes effective, deliver to the Commission a copy of the instrument of merger or consolidation duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose laws such merger or consolidation was effected, and comply in behalf of the predecessor corporation with the provisions of § 13.1-767. If a surviving or resulting corporation or limited liability company, business trust, registered limited liability partnership or limited partnership is to continue to transact business in the Commonwealth and has not received a certificate of authority to transact business in the Commonwealth or registered as a foreign limited liability company under § 13.1-1052, as a foreign business trust under § 13.1-1242, as a foreign registered limited liability partnership under § 50-73.138, or as a foreign limited partnership under § 50-73.54, then, within such 30 days, it shall deliver to the Commission an application, if a foreign corporation, for a certificate of authority to transact business in the Commonwealth, if a foreign limited liability company, for registration as a foreign limited liability company, if a foreign business trust, for registration as a foreign business trust, if a foreign registered limited liability partnership, for registration as a foreign registered limited liability partnership, or, if a foreign limited partnership, for registration as a foreign limited partnership, together with a duly authenticated copy of the instrument of merger or consolidation and also, in case of a merger, a copy of its articles of incorporation, certificate of limited partnership, partnership certificate, statement of registered limited liability partnership, articles of trust, or articles of organization and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate, limited partnership, registered limited liability partnership, business trust, or limited liability company records in the state or other jurisdiction under whose laws it is incorporated, formed, registered, or organized.

C. Upon the merger or consolidation of a foreign corporation with one or more foreign corporations, partnerships, limited partnerships, business trusts, or limited liability companies, all property in the Commonwealth owned by any of the foreign corporations, partnerships, limited partnerships, business trusts, or limited liability companies shall pass to the surviving or resulting foreign corporation, limited liability company, business trust, or limited partnership except as otherwise provided by the laws of the state or other jurisdiction by which it is governed, but only from and after the time when a duly authenticated copy of the instrument of merger or consolidation is filed with the Commission.

§ 13.1-809. Certificate of good standing.

A. Anyone may apply to the Commission for a certificate of good standing for a domestic or foreign corporation.

B. The certificate shall state that the corporation is in good standing in this Commonwealth and shall set forth:

1. The domestic corporation's corporate name or the foreign corporation's corporate name used in this Commonwealth;

2. That (i) the domestic corporation is duly incorporated under the laws of this Commonwealth, the date of its incorporation, and the period of its duration if less than perpetual; or (ii) the foreign corporation is authorized to transact business in this Commonwealth; and

3. If requested, a list of all certificates relating to articles filed with the Commission that have been issued by the Commission with respect to such corporation and their respective effective dates.

C. A domestic corporation or a foreign corporation authorized to transact business in this Commonwealth shall be deemed to be in good standing if:

1. All fees, 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;

2. An annual report required by § 13.1-936 has been delivered to and accepted by the Commission; and

3. No certificate of dissolution ~~or~~, certificate of withdrawal, *or order of reinstatement prohibiting the domestic corporation from engaging in business until it changes its corporate name* has been issued or such certificate *or prohibition* no longer is in effect.

D. The certificate may state any other facts of record in the office of the clerk of the Commission that may be requested by the applicant.

E. Subject to any qualification stated in the certificate, a certificate of good standing issued by the Commission may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this Commonwealth.

§ 13.1-916. Reinstatement of corporation that has ceased to exist.

A corporation that has ceased to exist may apply to the Commission for reinstatement within five years thereafter unless the corporate existence was terminated by order of the Commission (i) upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law *or* (ii) *entered pursuant to § 13.1-911 and the circuit court's decree directing dissolution contains no provision for reinstatement of corporate existence*. The Commission shall enter an order reinstating the corporate existence upon receiving an annual report together with payment of a reinstatement fee of \$10 plus all registration fees and penalties that were due before the corporation ceased to exist and that would have become due thereafter if the corporation had not ceased to exist. An annual report need not be submitted if such a report previously was filed during the calendar year in which reinstatement is sought. The application for reinstatement may be by letter signed by an officer or director of the corporation. The Commission shall assess the amounts that would have become due. Upon the entry by the Commission of an order of reinstatement, the corporate existence shall be deemed to have continued from the date of the termination of corporate existence, and any liability incurred by the corporation or a director, officer, or other agent after termination of corporate existence and before the reinstatement shall be determined as if the termination of corporate existence had never occurred. If the name of a corporation that has ceased to exist is not distinguishable upon the records of the Commission, the reinstated corporation shall not engage in business until it has amended its articles of incorporation to change its name to a name that is distinguishable upon the records of the Commission.

§ 13.1-928.1. Merger of foreign corporation authorized to transact business in Commonwealth.

A. Whenever a foreign corporation authorized to transact business in this Commonwealth is a party to a merger permitted by the laws of the state or country under whose laws it is incorporated, and such corporation is the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the Commission a copy of the articles of merger duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws such merger was effected; *however, the filing shall not be required when a foreign corporation merges with a domestic corporation, the foreign corporation's articles of incorporation are not amended by said merger, and the articles of merger filed on behalf of the domestic corporation pursuant to § 13.1-896 contain a statement that the merger is permitted under the laws of the state or other jurisdiction in which the foreign corporation is incorporated and that the foreign corporation has complied with that law in effecting the merger.*

B. Whenever a foreign corporation authorized to transact business in this Commonwealth is a party to a merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation is not the surviving corporation, or whenever such corporation is a party to a consolidation so permitted, the surviving or resulting corporation shall, if not continuing to transact business in this Commonwealth within thirty days after such merger or consolidation becomes effective, deliver to the Commission a duly authenticated copy of the instrument of merger or consolidation and comply in behalf of the predecessor corporation with the provisions of § 13.1-929. If the surviving or resulting corporation is to continue to transact business in this Commonwealth, within such thirty days, deliver to the Commission an application for a certificate of authority to transact business in this Commonwealth, together with a duly authenticated copy of the instrument of merger or consolidation and also, in case of a merger, a copy of its articles of incorporation and all amendments thereto, duly

429 authenticated by the Secretary of State or other official having custody of corporate records in the state
430 or country under whose laws it is incorporated.
431 C. Upon the merger or consolidation of two or more foreign corporations any one of which owns
432 property in this Commonwealth, all such property shall pass to the surviving or resulting corporation
433 except as otherwise provided by the laws of the state by which it is governed, but only from the time
434 when a duly authenticated copy of the instrument of merger or consolidation is filed with the
435 Commission.