CHAPTER 91

An Act to amend and reenact §§ 13.1-607, 13.1-614, 13.1-657, 13.1-708, 13.1-741.1, 13.1-746, 13.1-746.1, 13.1-746.2, 13.1-770, 13.1-771, 13.1-807, and 13.1-813 of the Code of Virginia, relating to business entities; the Virginia Stock Corporation Act and Virginia Nonstock Corporation Act.

[S 146]

Approved March 2, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-607, 13.1-614, 13.1-657, 13.1-708, 13.1-741.1, 13.1-746, 13.1-746.1, 13.1-746.2, 13.1-770, 13.1-771, 13.1-807, and 13.1-813 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-607. Correcting filed articles.

A. The board of directors of a corporation may authorize correction of any articles filed with the Commission if (i) the articles contain an inaccuracy; (ii) the articles were ~~defectively~~ *not properly authorized or defectively* executed, attested, sealed, verified, or acknowledged; or (iii) the electronic transmission of the articles to the Commission was defective.

B. Articles are corrected by filing with the Commission articles of correction setting forth:

1. The name of the corporation prior to filing;

2. A description of the articles to be corrected, including their effective date;

3. Each ~~inaccuracy and defect~~ *inaccurate or defective matter* that is to be corrected;

4. The correction of each ~~inaccuracy and defect~~ *inaccurate or defective matter*; and

5. A statement that the board of directors authorized the correction and the date of such authorization.

C. Upon the issuance of a certificate of correction by the Commission, the articles of correction shall become effective as of the effective date and time of the articles they correct except as to persons relying on the uncorrected articles and adversely affected by the correction. As to those persons, articles of correction are effective upon the issuance of the certificate of correction.

D. No articles of correction may be filed with the Commission more than 30 days after the effective date of the certificate relating to the articles to be corrected.

§ 13.1-614. Hearing and finality of Commission action; injunctions.

A. The Commission shall have no power to grant a hearing with respect to any certificate issued by the Commission with respect to any articles filed with the Commission except on a petition by a shareholder filed with the Commission and the corporation within ~~10~~ *30* days after the effective date of the certificate, in which the shareholder asserts that the certification of corporate action contained in the articles contains a misstatement of a material fact as to compliance with statutory requirements, specifying the particulars thereof. After hearing, on notice in writing to the corporation and the shareholder, the Commission shall determine the issues and revoke or refuse to revoke its order accordingly.

B. No court within or without the Commonwealth shall have jurisdiction to enjoin or delay the holding of any meeting of directors or shareholders for the purpose of authorizing or consummating any amendment, merger, share exchange, domestication, conversion or termination of corporate existence or the execution or filing with the Commission of any articles or other documents for such purpose, except pursuant to subsection C of § 13.1-661 or for fraud. No court within or without the Commonwealth, except the Supreme Court by way of appeal as authorized by law, shall have jurisdiction to review, reverse, correct or annul any action of the Commission, within the scope of its authority, with regard to any articles, certificate, order, objection or petition, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties.

C. Notwithstanding any provision of subsection A to the contrary, the Commission shall have the power to act upon a petition filed by a corporation at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person or persons without authority to act for the corporation.

§ 13.1-657. Action without meeting.

A. Action required or permitted by this chapter to be *adopted or* taken at a shareholders' meeting may be *adopted or* taken without a meeting if the ~~corporate~~ action is *adopted or* taken by all the shareholders entitled to vote on the ~~corporate~~ action, in which case no ~~corporate~~ action by the board of directors shall be required.

The *adoption or taking of the* action shall be evidenced by one or more written consents describing the ~~corporate~~ action taken, signed by all the shareholders entitled to vote on the action, bearing the date of each signature, and delivered to the corporation for inclusion in the minutes or filing with the

corporate records.

B. The articles of incorporation may provide that any action required or permitted by this chapter to be *adopted or* taken at a shareholders' meeting may be *adopted or* taken without a meeting, and without prior notice, if consents in writing setting forth the action so *adopted or* taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to ~~authorize~~ *adopt* or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date on which each shareholder signed the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

C. If not otherwise fixed under § 13.1-656 or 13.1-660 and if prior board action is not required respecting the action to be *adopted or* taken without a meeting, the record date for determining the shareholders entitled to *adopt or* take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under § 13.1-656 or 13.1-660 and if prior board action is required respecting the action to be *adopted or* taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to *adopt or* take the ~~corporate~~ action referred to therein unless, within 60 days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by the holders of shares having sufficient votes to *adopt or* take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to *adopt or* take the action are delivered to the corporation.

D. A consent signed pursuant to the provisions of this section has the effect of a vote ~~taken~~ at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action *adopted or* taken by written consent shall be effective when *(i)* written consents signed by the holders of shares having sufficient votes to *adopt or* take the action are delivered to the corporation~~. Corporate action taken under this section is effective~~ *or (ii) if an effective date is specified therein,* as of ~~the~~ *such* date ~~specified therein~~ provided ~~the~~ *such* consent states the date of execution by ~~each~~ *the* consenting shareholder.

E. If this chapter requires that notice of a proposed action be given to nonvoting shareholders and the action is to be *adopted or* taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the action ~~not less than 15 days before the action becomes effective and~~ not more than 10 days after (i) written consents sufficient to *adopt or* take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection D. The notice shall reasonably describe the action *adopted or* taken and contain or be accompanied by the same material that under any provision of this chapter would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

F. If action is *adopted or* taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action ~~not less than 15 days before the action becomes effective and~~ not more than 10 days after (i) written consents sufficient to *adopt or* take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection D. The notice shall reasonably describe the action *adopted or* taken and contain or be accompanied by the same material that under any provision of this chapter would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

G. An electronic transmission may be used to consent to an action, if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the shareholder, the shareholder's agent or the shareholder's attorney-in-fact.

H. Delivery of a written consent to the corporation under this section is effected by delivery to the corporation's registered agent at its registered office or to the secretary of the corporation at its principal office.

§ 13.1-708. Voting on amendments by voting groups.

A. Except as otherwise provided in the articles of incorporation, if a corporation has more than one class of shares outstanding, the outstanding shares of a class are entitled to vote as a separate voting group on a proposed amendment of the articles of incorporation if shareholder voting is otherwise required by this chapter and if the amendment would:

1. Increase or decrease the aggregate number of authorized shares of the class~~, provided that the vote of the class as a separate voting group is not required to increase or decrease the number of authorized shares of the class (but not below the number of shares thereof then outstanding and the number of shares required to be reserved for issuance), if so provided in the articles of incorporation as in effect prior to the issuance of any shares of the class or in any amendment thereto that was approved by the required vote of the shares of such class~~;

2. Effect an exchange or reclassification of all or part of the shares of the class into shares of another

class;

3. Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

4. Change the rights, preferences, or limitations of all or part of the shares of the class, but such class shall not be entitled to vote as a separate voting group on an amendment increasing the number of authorized shares of a subordinate class solely because both such classes vote on some or all matters as a single voting group;

5. Change the shares of all or part of the class into a different number of shares of the same class;

6. Create a new class of shares or change a class of shares with subordinate and inferior rights into a class of shares, having rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class, or increase the rights, preferences, or number of authorized shares of any class that after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;

7. In the case of a class of shares with preferential rights, divide the shares into a series, designate the series, and determine, or, unless authority was conferred at the time the class was created, authorize the board of directors to determine, variations in the rights, preferences and limitations among the shares of the respective series;

8. Limit or deny an existing preemptive right of all or part of the shares of the class; or

9. Cancel or otherwise affect rights to distributions that have accumulated but not yet been declared on all or part of the shares of the class.

B. If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection A, the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

C. If a proposed amendment that entitles two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected shall vote together as a single voting group on the proposed amendment, unless the articles of incorporation provide for different voting rights for shares of the different classes or series.

D. ~~A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares; provided, however, that, except~~ *Except* as otherwise provided in the articles of incorporation, shares that are convertible into shares of another class or series shall not have any right, prior to conversion, to vote on any matter because it affects the class or series into which such shares are convertible.

§ 13.1-741.1. Limitations on other remedies for fundamental transactions.

A. Except *for action taken before the Commission pursuant to § 13.1-614 or* as provided in subsection B, the legality of a proposed or completed corporate action described in subsection A of § 13.1-730 may not be contested, nor may the corporate action be enjoined, set aside or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

B. Subsection A does not apply to a corporate action that:

1. Was not authorized and approved in accordance with the applicable provisions of:

a. Article 11 (§ 13.1-705 et seq.), Article 12 (§ 13.1-715.1 et seq.), or Article 13 (§ 13.1-723 et seq.);

b. The articles of incorporation or bylaws; or

c. The resolutions of the board of directors authorizing the corporate action;

2. Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

3. Is an interested transaction, unless it has been authorized, approved or ratified by the board of directors in the same manner as is provided in subsection B of § 13.1-691 and has been authorized, approved or ratified by the shareholders in the same manner as is provided in subsection C of § 13.1-691 as if the interested transaction were a director's conflict of interests transaction; or

4. Is ~~approved~~ *adopted or taken* by less than unanimous consent of the voting shareholders pursuant to § 13.1-657 if:

a. The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the ~~approval~~ *adoption or taking* of the corporate action was not effective at least ~~15~~ *10* days before the corporate action was effected; and

b. The proceeding challenging the corporate action is commenced within 10 days after notice of the ~~approval~~ *adoption or taking* of the corporate action is effective as to the shareholder bringing the proceeding.

C. Any remedial action with respect to corporate action described in subsection A of § 13.1-730 shall not limit the scope of, or be inconsistent with, any provision of § 13.1-614.

§ 13.1-746. Known claims against dissolved corporation.

A. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

B. The dissolved corporation shall deliver to each of its known claimants written notice of the

dissolution at any time after its effective date. The written notice shall:

1. Provide a reasonable description of the claim that the claimant may be entitled to assert;

2. State whether the claim is admitted, or not admitted, and if admitted (i) the amount that is admitted, which may be as of a given date, and (ii) any interest obligation if fixed by an instrument of indebtedness;

3. Provide a mailing address where a claim may be sent;

4. State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which confirmation of the claim must be delivered to the dissolved corporation; and

5. State that, except to the extent that any claim is admitted, the claim will be barred if written confirmation of the claim is not delivered by the deadline.

C. A claim against the dissolved corporation is barred to the extent that it is not admitted:

1. If the dissolved corporation delivered written notice to the claimant in accordance with subsection B and the claimant does not deliver written confirmation of the claim to the dissolved corporation by the deadline; or

2. If the dissolved corporation delivered written notice to the claimant that his claim is not admitted, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within 90 days from the ~~delivery of written confirmation of the claim to the dissolved corporation~~ *effective date of such notice*.

D. For purposes of this section, "claim" does not include (i) a contingent liability or a claim based on an event occurring after the effective date of dissolution or (ii) a liability or claim the ultimate maturity of which is more than 60 days after the delivery of written notice to the claimant pursuant to subsection B. Nothing in this section shall prevent acceleration of liability for an unmatured claim or liability by operation of the agreement under which it was created or exercise of any discretionary right of the claimant thereunder.

E. If a liability exists but the full extent of any damages is or may not be ascertainable, and a proceeding to enforce the claim is commenced pursuant to subdivision C 2, the claimant may amend the pleadings after filing to include any damages that occurred or are alleged to have occurred after filing, and the court having jurisdiction of such claim may continue such proceeding during its pendency if it appears that further damages are or may be still occurring.

§ 13.1-746.1. Other claims against dissolved corporation.

A. A dissolved corporation may also (i) deliver notice of its dissolution to any known claimant with a liability or claim that is excluded from the definition of a claim in subsection D of § 13.1-746 and (ii) publish notice of its dissolution one time in a newspaper of general circulation in the city or county where the dissolved corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located. The notice of dissolution shall request that persons with claims against the dissolved corporation present them in accordance with the notice.

B. The notice shall:

1. Describe the information that is required to be included in a claim and provide a mailing address where the claim may be sent; and

2. State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced prior to the earlier of the expiration of any applicable statute of limitations or three years after the date of delivery of notice to the claimant, or the date of publication of the notice, as appropriate.

C. If the dissolved corporation provides notice of its dissolution in accordance with this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation prior to the earlier of the expiration of any applicable statute of limitations or three years after the date on which notice was delivered to the claimant or published, as appropriate:

1. A claimant who was not given written notice under § 13.1-746;

2. A claimant whose claim was timely sent to the dissolved corporation but not acted on;

3. A claimant whose claim does not meet the definition of a claim in subsection D of § 13.1-746~~; provided that in the case of a known claim the corporation delivered notice of its dissolution in accordance with clause (i) of subsection A of this section~~.

D. A claim that is not barred by subsection C of § 13.1-746 or subsection C of § 13.1-746.1 may be enforced:

1. Against the dissolved corporation, to the extent of its undistributed assets; or

2. Except as provided in subsection D of § 13.1-746.2, if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

§ 13.1-746.2. Court proceedings.

A. A dissolved corporation that has ~~published a notice under~~ *complied with the notice requirements of* § 13.1-746.1 may file an application with the circuit court of the city or county where the dissolved

corporation's principal office, or, if none in the Commonwealth, its registered office, is or was last located for a determination of the amount and form of security to be provided for payment of claims that *(i)* are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution *or (ii) are based on a liability the ultimate maturity of which is more than 60 days after delivery of written notice to the claimant pursuant to subsection B of § 13.1-746*. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection C of § 13.1-746.1.

B. Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each *known* claimant ~~holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation~~ *whose claim is covered by the application*.

C. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

D. Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection A shall satisfy the dissolved corporation's obligations with respect to claims ~~that do not meet the definition of a claim in subsection D of § 13.1-746~~ *covered by that order*, and such claims may not be enforced against a shareholder who received assets in liquidation.

§ 13.1-770. Corporate records.

A. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

B. A corporation shall maintain appropriate accounting records.

C. A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class and series, if any, of shares showing the number and class and series, if any, of shares held by each. *However, the foregoing shall not require the corporation or its agent to maintain, as part of such record of shareholders, beneficial owners whose shares are held by a nominee on the shareholder's behalf except to the extent that the corporation has established and maintains a procedure for registration of such rights under § 13.1-664.*

D. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

E. A corporation shall keep a copy of the following records:

1. Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in subdivision L 5 of § 13.1-604 regarding facts on which a filed document is dependent;

2. Its bylaws or restated bylaws and all amendments to them currently in effect;

3. Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;

4. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;

5. All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under § 13.1-774;

6. A list of the names and business addresses of its current directors and officers; and

7. Its most recent annual report delivered to the Commission under § 13.1-775.

§ 13.1-771. Inspection of records by shareholders.

A. Subject to subsection C of § 13.1-772, a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection E of § 13.1-770 if the shareholder gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

B. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection C and gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy:

1. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection A;

2. Accounting records of the corporation; and

3. The record of shareholders *of record*.

C. A shareholder may inspect and copy the records identified in subsection B only if:

1. The shareholder has been a shareholder ~~of record~~ for at least six months immediately preceding the shareholder's demand or is the holder of record *or beneficial owner* of at least five percent of all of the outstanding shares;

2. The shareholder's demand is made in good faith and for a proper purpose;

3. The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

4. The records are directly connected with the shareholder's purpose.

D. The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

E. This section does not affect:

1. The right of a shareholder to inspect records under § 13.1-661 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;

2. The power of a court, independently of this chapter, to compel the production of corporate records for examination.

F. For purposes of this section, *other than subdivision B 3,* "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.

§ 13.1-807. Correcting filed articles.

A. The board of directors of a corporation may authorize correction of any articles filed with the Commission if (i) the articles contain an inaccuracy; (ii) the articles were ~~defectively~~ *not properly authorized or defectively* executed, attested, sealed, verified, or acknowledged; or (iii) the electronic transmission of the articles to the Commission was defective.

B. Articles are corrected by filing with the Commission articles of correction setting forth:

1. The name of the corporation prior to filing;

2. A description of the articles to be corrected, including their effective date;

3. Each ~~inaccuracy and defect~~ *inaccurate or defective matter* that is to be corrected;

4. The correction of each ~~inaccuracy and defect~~ *inaccurate or defective matter*; and

5. A statement that the board of directors authorized the correction and the date of such authorization.

C. Upon the issuance of a certificate of correction by the Commission, the articles of correction shall become effective as of the effective date and time of the articles they correct except as to persons relying on the uncorrected articles and adversely affected by the correction. As to those persons, articles of correction are effective upon the issuance of the certificate of correction.

D. No articles of correction may be filed with the Commission more than 30 days after the effective date of the certificate relating to the articles to be corrected.

§ 13.1-813. Hearing and finality of Commission action; injunctions.

A. The Commission shall have no power to grant a hearing with respect to any certificate issued by the Commission with respect to any articles filed with the Commission except on a petition by a member or director, filed with the Commission and the corporation within ~~10~~ *30* days after the effective date of the certificate, in which the member or director asserts that the certification of corporate action contained in the articles contains a misstatement of a material fact as to compliance with statutory requirements, specifying the particulars thereof. After hearing, on notice in writing to the corporation and the member or director, the Commission shall determine the issues and revoke or refuse to revoke its order accordingly.

B. No court within or without the Commonwealth shall have jurisdiction to enjoin or delay the holding of any meeting of directors or members for the purpose of authorizing or consummating any amendment, merger, domestication, or termination of corporate existence, or the execution or filing with the Commission of any articles or other documents for such purpose, except pursuant to subsection C of § 13.1-845 or for fraud. No court within or without the Commonwealth, except the Supreme Court by way of appeal as authorized by law, shall have jurisdiction to review, reverse, correct or annul any action of the Commission, within the scope of its authority, with regard to any articles, certificate, order, objection or petition, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties.

C. Notwithstanding any provision of subsection A to the contrary, the Commission shall have the power to act upon a petition filed by a corporation at any time to correct Commission records so as to eliminate the effects of clerical errors and of filings made by a person or persons without authority to act for the corporation.