VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 216

An Act to amend and reenact §§ 13.1-615, 13.1-630, 13.1-716, 13.1-720, 13.1-815, 13.1-829, 13.1-893.1, 13.1-896, and 15.2-5109 of the Code of Virginia, relating to stock and nonstock corporations; fees, names, mergers; terminations.

[H 2445]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-615, 13.1-630, 13.1-716, 13.1-720, 13.1-815, 13.1-829, 13.1-893.1, 13.1-896, and 15.2-5109 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-615. Fees to be collected by Commission; payment of fees prerequisite to Commission action; exceptions.

A. The Commission shall assess the registration fees and shall charge and collect the filing fees, charter fees, and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment.

B. The Commission shall not file or issue with respect to any domestic or foreign corporation any document or certificate specified in this chapter, except the report required by § 13.1-775, a statement of change pursuant to § 13.1-635 or 13.1-764, and a statement of resignation pursuant to § 13.1-636 or 13.1-765, until 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 by or on behalf of such corporation. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign corporation that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the corporation's annual registration fee payment in any year, provided that the Commission shall not issue a certificate of domestication with respect to a foreign corporation until the annual registration fee has been paid by or on behalf of that corporation.

C. Any domestic corporation that has ceased to exist in the Commonwealth because of the issuance of a certificate of termination of corporate existence, certificate of incorporation surrender or certificate of entity conversion or any foreign corporation that has obtained a certificate of withdrawal, effective on or before its annual report due date pursuant to subsection C of § 13.1-775 in any year, shall not be required to pay the registration fee for that year. Any domestic or foreign corporation that has merged, effective on or before its annual report due date pursuant to subsection C of § 13.1-775 in any year, into a surviving domestic corporation or into a surviving foreign corporation that files with the Commission *an authenticated copy of* the ~~certificate~~ *instrument* of merger on or before such date, shall not be required to pay the registration fee for that year. *Any foreign corporation that has converted, effective on or before its annual report due date pursuant to subsection C of § 13.1-775 in any year, to a different entity type that files with the Commission an authenticated copy of the instrument of entity conversion on or before such date, shall not be required to pay the registration fee for that year.* The Commission shall cancel the registration fee assessments specified in this subsection that remain unpaid.

D. Any foreign corporation that has amended its articles of incorporation to reduce the number of shares it is authorized to issue, effective prior to its annual assessment date pursuant to subsection B of § 13.1-775.1 of a given year, and has timely filed an authenticated copy of the amendment with the Commission pursuant to § 13.1-760 after its annual assessment date pursuant to subsection B of § 13.1-775.1, shall have its registration fee reassessed to reflect the new number of authorized shares.

E. Registration fee assessments that have been paid shall not be refunded.

§ 13.1-630. Corporate name.

A. A corporate name shall contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd." Such words and their corresponding abbreviations may be used interchangeably for all purposes.

B. A corporate name shall not contain:

1. Any language stating or implying that it will transact one of the special kinds of businesses listed in § 13.1-620 unless it proposes in fact to engage in such special kind of business; ~~or~~

2. *The word "redevelopment" unless the corporation is organized as an urban redevelopment corporation pursuant to Chapter 190 of the 1946 Acts of Assembly, as amended; or*

3. Any word or phrase that is prohibited by law for such corporation.

C. Except as authorized by subsection D, a corporate name shall be distinguishable upon the records of the Commission from:

1. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws

of the Commonwealth or authorized to transact business in the Commonwealth;

2. A corporate name reserved or registered under § 13.1-631, 13.1-632, 13.1-830 or 13.1-831;

3. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in the Commonwealth;

4. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in the Commonwealth;

5. A limited liability company name reserved under § 13.1-1013;

6. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in the Commonwealth;

7. The name of a domestic business trust or a foreign business trust registered to transact business in the Commonwealth;

8. A business trust name reserved under § 13.1-1215;

9. The designated name adopted by a foreign business trust because its real name is unavailable for use in the Commonwealth;

10. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in the Commonwealth;

11. A limited partnership name reserved under § 50-73.3; and

12. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in the Commonwealth.

D. A domestic corporation may apply to the Commission for authorization to use a name that is not distinguishable upon the Commission's records from one or more of the names described in subsection C. The Commission shall authorize use of the name applied for if~~:~~

~~1.~~ ~~The~~ *the* other entity consents to the use in writing and submits an undertaking in *a* form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying corporation.

~~2. [Repealed.]~~

E. The use of assumed names or fictitious names, as provided for in Chapter 5 (§ 59.1-69 et seq.) of Title 59.1, is not affected by this chapter.

F. The Commission, in determining whether a corporate name is distinguishable upon its records from the name of any of the business entities listed in subsection C, shall not consider any word, phrase, abbreviation, or designation required or permitted under this section and § 13.1-544.1, subsection A of § 13.1-1012, § 13.1-1104, subdivision 1 of § 50-73.2, and subdivision A 2 of § 50-73.78 to be contained in the name of a business entity formed or organized under the laws of the Commonwealth or authorized or registered to transact business 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 manner provided in this chapter. When a domestic corporation is the survivor of a merger with a domestic nonstock corporation, it may become, pursuant to subdivision C 5, a domestic nonstock corporation, provided that the only parties to the merger are domestic corporations and domestic nonstock corporations.

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

C. The plan of merger shall include:

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

2. The terms and conditions of the merger;

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

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

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

6. Any other provisions required by the laws under which any party to the merger is organized or by

which it is governed, or by the articles of incorporation or organic document of any such party.

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

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

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

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

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

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

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

§ 13.1-720. Articles of merger or share exchange.

A. After a plan of merger or share exchange has been adopted and approved as required by this chapter, articles of merger or share exchange shall be executed on behalf of each party to the merger or share exchange. The articles shall set forth:

1. The plan of merger or share exchange, the names of the parties to the merger or share exchange and, for each party that is a foreign corporation or eligible entity, the name of the state or country under whose law it is incorporated or formed;

2. If the articles of incorporation of a domestic corporation that is the survivor of a merger are amended, or if a new domestic corporation is created as a result of a merger, as an attachment to the articles of merger or share exchange, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

3. *The date the plan of merger or share exchange was adopted by each domestic corporation that was a party to the merger or share exchange;*

4. If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, either:

a. A statement that the plan was approved by the unanimous consent of the shareholders; or

b. A statement that the plan was submitted to the shareholders by the board of directors in accordance with this chapter, and a statement of:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group;

~~4~~ *5.* If the plan of merger or share exchange ~~did not require~~ *was adopted by the directors without* approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement ~~to that effect~~ *that the plan of merger or share exchange was duly approved by the directors* including the reason *shareholder* approval was not required and, in the case of a merger pursuant to § 13.1-719.1, the additional statements required by subsection D of § 13.1-719.1; and

~~5~~ *6.* As to each foreign corporation or eligible entity that was a party to the merger or share exchange, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

B. Articles of merger or share exchange shall be filed with the Commission by the survivor of the merger or the acquiring corporation in a share exchange. If the Commission finds that the articles of merger or share exchange comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger or share exchange. Articles of merger or share exchange filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

C. In the case of a merger pursuant to § 13.1-719:

1. The articles need only be executed on behalf of the ~~surviving~~ *parent* corporation; and

2. The certificate of merger shall not be deemed a part of the articles of incorporation.

§ 13.1-815. Fees to be collected by Commission; payment of fees prerequisite to Commission action; exceptions.

A. The Commission shall assess the registration fees and shall charge and collect the filing fees, charter fees and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document which is not accepted for filing, at any time within one year from the date of its payment.

B. The Commission shall not file or issue with respect to any domestic or foreign corporation any document or certificate specified in this Act, except the report required by § 13.1-936, a statement of change pursuant to § 13.1-834 or 13.1-926, and a statement of resignation pursuant to § 13.1-835 or 13.1-927, until all fees, charges, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this Act or Title 12.1 have been paid by or on behalf of such corporation. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign corporation that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is on or before the due date of the corporation's annual registration payment in any year, provided that the Commission shall not issue a certificate of domestication with respect to a foreign corporation until the annual registration fee has been paid by or on behalf of that corporation.

C. Any domestic corporation that has ceased to exist in the Commonwealth because of the issuance of a certificate of termination of corporate existence or certificate of incorporation surrender or any foreign corporation that has obtained a certificate of withdrawal, effective on or before its annual report due date pursuant to subsection C of § 13.1-936 in any year, shall not be required to pay the registration fee for that year. Any domestic or foreign corporation that has merged, effective on or before its annual report due date pursuant to subsection C of § 13.1-936 in any year, into a surviving domestic corporation or into a surviving foreign corporation that files with the Commission *an authenticated copy of* the ~~certificate~~ *instrument* of merger on or before such date, shall not be required to pay the registration fee for that year. The Commission shall cancel the registration fee assessments specified in this subsection that remain unpaid.

D. Registration fee assessments that have been paid shall not be refunded.

§ 13.1-829. Corporate name.

A. A corporate name shall not contain ~~any~~*:*

1. Any word or phrase that indicates or implies that it is organized for the purpose of conducting any business other than a business which it is authorized to conduct*; or*

2. The word "redevelopment" unless the corporation is organized as an urban redevelopment corporation pursuant to Chapter 190 of the 1946 Acts of Assembly, as amended.

B. Except as authorized by subsection C, a corporate name shall be distinguishable upon the records of the Commission from:

1. The name of any corporation, whether issuing shares or not issuing shares, existing under the laws of the Commonwealth or authorized to transact business in the Commonwealth;

2. A corporate name reserved or registered under § 13.1-631, 13.1-632, 13.1-830 or 13.1-831;

3. The designated name adopted by a foreign corporation, whether issuing shares or not issuing shares, because its real name is unavailable for use in the Commonwealth;

4. The name of a domestic limited liability company or a foreign limited liability company registered to transact business in the Commonwealth;

5. A limited liability company name reserved under § 13.1-1013;

6. The designated name adopted by a foreign limited liability company because its real name is unavailable for use in the Commonwealth;

7. The name of a domestic business trust or a foreign business trust registered to transact business in the Commonwealth;

8. A business trust name reserved under § 13.1-1215;

9. The designated name adopted by a foreign business trust because its real name is unavailable for use in the Commonwealth;

10. The name of a domestic limited partnership or a foreign limited partnership registered to transact business in the Commonwealth;

11. A limited partnership name reserved under § 50-73.3; and

12. The designated name adopted by a foreign limited partnership because its real name is unavailable for use in the Commonwealth.

C. A domestic corporation may apply to the Commission for authorization to use a name that is not distinguishable upon the Commission's records from one or more of the names described in subsection B. The Commission shall authorize use of the name applied for if the other entity consents to the use in writing and submits an undertaking in form satisfactory to the Commission to change its name to a name that is distinguishable upon the records of the Commission from the name of the applying

corporation.

D. The use of assumed names or fictitious names, as provided for in Chapter 5 (§ 59.1-69 et seq.) of Title 59.1, is not affected by this Act.

E. The Commission, in determining whether a corporate name is distinguishable upon its records from the name of any of the business entities listed in subsection B, shall not consider any word, phrase, abbreviation, or designation required or permitted under § 13.1-544.1, subsection A of § 13.1-630, subsection A of § 13.1-1012, § 13.1-1104, subdivision 1 of § 50-73.2, and subdivision A 2 of § 50-73.78 to be contained in the name of a business entity formed or organized under the laws of the Commonwealth or authorized or registered to transact business in the Commonwealth.

Article 11.

Merger.

§ 13.1-893.1. Definitions.

As used in this article:

"Merger" means a business combination pursuant to § 13.1-894.

"Party to a merger" means any domestic or foreign corporation or eligible entity that will merge under a plan of merger.

"Survivor" in a merger means the domestic or foreign corporation or the eligible entity into which one or more other domestic or foreign corporations or eligible entities are merged. A survivor of a merger may ~~predate~~ *preexist* the merger or be created by the merger.

~~Article 11.~~

~~Merger.~~

§ 13.1-896. Articles of merger.

A. After a plan of merger has been adopted and approved as required by this Act, articles of merger shall be executed on behalf of each party to the merger. The articles shall set forth:

1. The plan of merger, the names of the parties to the merger, and, for each party that is a foreign corporation or eligible entity, the name of the state or country under whose law it is incorporated or formed;

2. If the articles of incorporation of a domestic corporation that is the survivor of a merger are amended, or if a new domestic corporation is created as a result of a merger, as an attachment to the articles of merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

3. *The date the plan of merger was adopted by each domestic corporation that was a party to the merger;*

4. If the plan of merger required approval by the members of a domestic corporation that was a party to the merger, either:

a. A statement that the plan was approved by the unanimous consent of the members; or

b. A statement that the plan was submitted to the members by the board of directors in accordance with this Act, and a statement of:

(1) The designation of and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

~~4~~ *5*. If the plan of merger ~~did not require~~ *was adopted by the directors without* approval by the members of a domestic corporation that was a party to the merger, a statement ~~to that effect~~ *that the plan of merger was duly approved by the vote of a majority of the directors in office,* including the reason *member* approval was not required~~, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office~~; and

~~5~~ *6*. As to each foreign corporation or eligible entity that was a party to the merger, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

B. Articles of merger shall be filed with the Commission by the survivor of the merger. If the Commission finds that the articles of merger comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of merger. Articles of merger filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

§ 15.2-5109. Dissolution and termination of authority.

Whenever the board of an authority determines that the purposes for which it was created have been completed or are impractical or impossible or that its functions have been taken over by one or more political subdivisions and that all its obligations have been paid or have been assumed by one or more of such political subdivisions or any authority created thereby or that cash or United States government

securities have been deposited for their payment, it shall adopt and file with the governing body of each political subdivision which is a member of the authority a resolution declaring such facts. If all the governing bodies adopt resolutions concurring in such declaration and finding that the authority should be dissolved, they shall file appropriate articles of dissolution with the State Corporation Commission. *When the affairs of the authority have been wound up and all of its assets have been distributed, the governing bodies shall file appropriate articles of termination of corporate existence with the State Corporation Commission.*

If any of the governing bodies refuse to adopt resolutions concurring in such declaration, then the authority may petition the circuit court for any locality which is a member of the authority to order one or more of such governing bodies to create a new authority. The circuit court may order the governing body of the political subdivision requesting dissolution of the existing authority to adopt an ordinance establishing a new authority to which the provisions of §§ 15.2-5102 through 15.2-5106 shall not apply. Thereafter, the court may order that the assets be divided among the authorities and, subject to the approval of any debt holder, require the assumption of a proportionate share of the obligations of the existing authority by the new authority.

Notwithstanding the provisions of subdivision 1 of § 15.2-5114, an authority shall continue in existence and shall not be dissolved because the term for which it was created, including any extensions thereof, has expired, unless all of such authority's functions have been taken over and its obligations have been paid or have been assumed by one or more political subdivisions or by an authority created thereby, or cash or United States government securities have been deposited for their payment.