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SENATE BILL NO. 131

Offered January 13, 2010

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A BILL to amend and reenact §§ 13.1-803, 13.1-804, 13.1-810, 13.1-813, 13.1-823, 13.1-842, 13.1-845, 13.1-847, 13.1-847.1, 13.1-855, 13.1-866, 13.1-878, 13.1-883, and 13.1-939 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 13.1-844.2, relating to the Virginia Nonstock Corporation Act.

Patron—Stosch

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-803, 13.1-804, 13.1-810, 13.1-813, 13.1-823, 13.1-842, 13.1-845, 13.1-847, 13.1-847.1, 13.1-855, 13.1-866, 13.1-878, 13.1-883, and 13.1-939 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 13.1-844.2 as follows:

§ 13.1-803. Definitions.

As used in this Act:

"Articles of incorporation" means all documents constituting, at any particular time, the charter of a corporation. It includes the original charter issued by the General Assembly, a court or the Commission and all amendments including certificates of merger, consolidation or correction. When the articles of incorporation have been restated pursuant to any articles of restatement, amendment, domestication, or merger, it includes only the restated articles of incorporation without the accompanying articles of restatement, amendment, domestication, or merger.

"Board of directors" means the group of persons vested with the management of the business of the corporation irrespective of the name by which such group is designated, and "director" means a member of the board of directors.

"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 ~~so~~, *displayed*, or *presented* that a reasonable person against whom the writing is to operate should have noticed it. For example, ~~printing in italics or text that is italicized~~, *is in boldface* ~~or~~, *contrasting color colors*, or *typing in capitals*, or *is underlined* is conspicuous.

"Corporation" or "domestic corporation" means a corporation not authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this Act or existing pursuant to the laws of the Commonwealth on January 1, 1986, or that, 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 that has become a domestic corporation of the Commonwealth pursuant to Article 11.1 (§ 13.1-898.2 et seq.) of this Act.

"Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, *if authorized in accordance with § 13.1-810*, by electronic transmission.

"Disinterested director" means a director who, at the time action is to be taken under § 13.1-871, 13.1-878, or 13.1-880, 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 § 13.1-878 or 13.1-880, 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: (a) 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 or (b) service as a director of another corporation of which an interested person is also a director.

"Document" means (i) any tangible medium on which information is inscribed, and includes any writing or written instrument, or (ii) an electronic record.

"Domestic business trust" has the same meaning as specified in § 13.1-1201.

"Domestic limited liability company" has the same meaning as specified in § 13.1-1002.

"Domestic limited partnership" has the same meaning as specified in § 50-73.1.

"Domestic partnership" means an association of two or more persons to carry on as co-owners of a

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59 business for profit formed under § 50-73.88 or predecessor law of the Commonwealth and includes, for  
60 all purposes of the laws of the Commonwealth, a registered limited liability partnership.

61 "Domestic stock corporation" has the same meaning as "domestic corporation" as specified in  
62 § 13.1-603.

63 "Effective date of notice" is defined in § 13.1-810.

64 "*Electronic*" means relating to technology having electrical, digital, magnetic, wireless, optical,  
65 electromagnetic, or similar capabilities.

66 "*Electronic record*" means information that is stored in an electronic or other medium and is  
67 retrievable in paper form through an automated process used in conventional commercial practice,  
68 unless otherwise authorized in accordance with subsection J of § 13.1-810.

69 "Electronic transmission" or "*electronically transmitted*" means any form or process of  
70 communication, not directly involving the physical transmission transfer of paper or other tangible  
71 medium, that creates a record that may be retained, retrieved and reviewed (i) is suitable for the  
72 retention, retrieval, and reproduction of information by a the recipient thereof, and that may be directly  
73 reproduced (ii) is retrievable in paper form by such a the recipient through an automated process used in  
74 conventional commercial practice, unless otherwise authorized in accordance with subsection J of  
75 § 13.1-810. Any term used in this definition that is defined in § 59.1-480 shall have the meaning set  
76 forth in such section.

77 "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign stock  
78 corporation.

79 "Eligible interests" means interests or shares.

80 "Employee" includes, unless otherwise provided in the bylaws, an officer but not a director. A  
81 director may accept duties that make him also an employee.

82 "Entity" includes any domestic or foreign corporation; any domestic or foreign stock corporation; any  
83 domestic or foreign unincorporated entity; any estate or trust; and any state, the United States, and any  
84 foreign government.

85 "Foreign business trust" has the same meaning as specified in § 13.1-1201.

86 "Foreign corporation" means a corporation not authorized by law to issue shares, organized under  
87 laws other than the laws of the Commonwealth.

88 "Foreign limited liability company" has the same meaning as specified in § 13.1-1002.

89 "Foreign limited partnership" has the same meaning as specified in § 50-73.1.

90 "Foreign partnership" means an association of two or more persons to carry on as co-owners of a  
91 business for profit formed under the laws of any state or jurisdiction other than the Commonwealth, and  
92 includes, for all purposes of the laws of the Commonwealth, a foreign registered limited liability  
93 partnership.

94 "Foreign registered limited liability partnership" has the same meaning as specified in § 50-73.79.

95 "Foreign stock corporation" has the same meaning as "foreign corporation" as specified in  
96 § 13.1-603.

97 "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed  
98 by an organic law of a jurisdiction other than the Commonwealth.

99 "Government subdivision" includes authority, county, district, and municipality.

100 "Includes" denotes a partial definition.

101 "Individual" means a natural person.

102 "Interest" means either or both of the following rights under the organic law of a foreign or domestic  
103 unincorporated entity:

104 1. The right to receive distributions from the entity either in the ordinary course or upon liquidation;  
105 or

106 2. The right to receive notice or vote on issues involving its internal affairs, other than as an agent,  
107 assignee, proxy, or person responsible for managing its business and affairs.

108 "Means" denotes an exhaustive definition.

109 "Member" means one having a membership interest in a corporation in accordance with the  
110 provisions of its articles of incorporation or bylaws.

111 "Membership interest" means the interest of a member in a domestic or foreign corporation,  
112 including voting and all other rights associated with membership.

113 "Organic document" means the document, if any, that is filed of public record to create an  
114 unincorporated entity. Where an organic document has been amended or restated, the term means the  
115 organic document as last amended or restated.

116 "Organic law" means the statute governing the internal affairs of a domestic or foreign corporation or  
117 eligible entity.

118 "Person" includes an individual and an entity.

119 "Principal office" means the office, in or out of the Commonwealth, where the principal executive  
120 offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or

121 out of the Commonwealth, so designated by the board of directors. The designation of the principal  
 122 office in the most recent annual report filed pursuant to § 13.1-936 shall be conclusive for purposes of  
 123 this Act.

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

126 "Record date" means the date established under Article 7 (§ 13.1-837 et seq.) of this Act on which a  
 127 corporation determines the identity of its members and their membership interests for purposes of this  
 128 Act. The determination shall be made as of the close of business at the principal office of the  
 129 corporation on the record date unless another time for doing so is specified when the record date is  
 130 fixed.

131 "Shares" has the same meaning as specified in § 13.1-603.

132 "*Sign*" or "*signature*" means, with present intent to authenticate or adopt a document: (i) to execute  
 133 or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature;  
 134 or (ii) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or  
 135 process, and includes an electronic signature in an electronic transmission.

136 "State" when referring to a part of the United States, includes any state or commonwealth, any  
 137 territory or insular possession of the United States, and any of their agencies and governmental  
 138 subdivisions.

139 "Transact business" includes the conduct of affairs by any corporation that is not organized for profit.

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

142 "United States" includes any district, authority, bureau, commission, department, or any other agency  
 143 of the United States.

144 "Voting group" means all members of one or more classes that under the articles of incorporation or  
 145 this Act are entitled to vote and be counted together collectively on a matter at a meeting of members.  
 146 All members entitled by the articles of incorporation or this Act to vote generally on the matter are for  
 147 that purpose a single voting group.

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

149 "*Writing*" or "*written*" means any information in the form of a document.

150 § 13.1-804. Filing requirements.

151 A. A document shall satisfy the requirements of this section, and of any other section that adds to or  
 152 varies these requirements, to be entitled to be filed with the Commission.

153 B. The document shall be one that this Act requires or permits to be filed with the Commission.

154 C. The document shall contain the information required by this Act. It may contain other information  
 155 as well.

156 D. The document shall be typewritten or printed or, if electronically transmitted, shall be in a format  
 157 that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion  
 158 shall be in black. Photocopies, or other reproduced copies, of typewritten or printed documents may be  
 159 filed. In every case, information in the document shall be legible and the document shall be capable of  
 160 being reformatted and reproduced in copies of archival quality.

161 E. The document shall be in the English language. A corporate name need not be in English if  
 162 written in English letters or Arabic or Roman numerals. The articles of incorporation, duly authenticated  
 163 by the official having custody of corporate records in the state or country under whose law the  
 164 corporation is incorporated, which are required of foreign corporations need not be in English if  
 165 accompanied by a reasonably authenticated English translation.

166 F. The document shall be ~~executed~~ *signed* in the name of the *domestic or foreign* corporation:

167 1. By the chairman or any vice-chairman of the board of directors, the president, or any other of its  
 168 officers authorized to act on behalf of the corporation;

169 2. If directors have not been selected or the corporation has not been formed, by an incorporator; or

170 3. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that  
 171 fiduciary.

172 G. Any annual report required to be filed by § 13.1-936 shall be ~~executed~~ *signed* in the name of the  
 173 corporation by an officer or director listed in the report.

174 H. The person ~~executing~~ *signing* the document shall ~~sign~~ *sign* it and state beneath or opposite his  
 175 signature his name and the capacity in which he signs. Any signature may be a facsimile. The document  
 176 may but need not contain a corporate seal, attestation, acknowledgment, or verification.

177 I. If, pursuant to any provision of this Act, the Commission has prescribed a mandatory form for the  
 178 document, the document shall be in or on the prescribed form.

179 J. The document shall be delivered to the Commission for filing and shall be accompanied by the  
 180 required filing fee, and any charter or entrance fee or registration fee required by this Act.

181 K. The Commission may accept the electronic filing of any information required or permitted to be

182 filed by this Act and may prescribe the methods of execution, recording, reproduction and certification  
 183 of electronically filed information pursuant to § 59.1-496.

184 L. Whenever a provision of this Act permits any of the terms of a plan or a filed document to be  
 185 dependent on facts objectively ascertainable outside the plan or filed document, the following provisions  
 186 apply:

187 1. The plan or filed document shall specify the nationally recognized news or information medium in  
 188 which the facts may be found or otherwise state the manner in which the facts can be objectively  
 189 ascertained. The manner in which the facts will operate upon the terms of the plan or filed document  
 190 shall be set forth in the plan or filed document.

191 2. The facts may include:

192 a. Any of the following that are available in a nationally recognized news or information medium  
 193 either in print or electronically: statistical or market indices, market prices of any security or group of  
 194 securities, interest rates, currency exchange rates, or similar economic or financial data;

195 b. A determination or action by any person or body, including the corporation or any other party to a  
 196 plan or filed document; or

197 c. The terms of or actions taken under an agreement to which the corporation is a party, or any other  
 198 agreement or document.

199 3. As used in this subsection:

200 a. "Filed document" means a document filed with the Commission under § 13.1-819 or Article 10  
 201 (§ 13.1-884 et seq.) or 11 (§ 13.1-894 et seq.) of this Act; and

202 b. "Plan" means a plan of merger.

203 4. The following terms of a plan or filed document may not be made dependent on facts outside the  
 204 plan or filed document:

205 a. The name and address of any person required in a filed document;

206 b. The registered office of any entity required in a filed document;

207 c. The registered agent of any entity required in a filed document;

208 d. The number of members and designation of each class of members;

209 e. The effective date of a filed document; and

210 f. Any required statement in a filed document of the date on which the underlying transaction was  
 211 approved or the manner in which that approval was given.

212 5. If a term of a filed document is made dependent on a fact objectively ascertainable outside of the  
 213 filed document and that fact is not objectively ascertainable by reference to a source described in  
 214 subdivision 2a or to a document that is a matter of public record, or if the affected members have not  
 215 received notice of the fact from the corporation, then the corporation shall file with the Commission  
 216 articles of amendment setting forth the fact promptly after the time when the fact referred to is first  
 217 objectively ascertainable or thereafter changes. Articles of amendment under this subdivision are deemed  
 218 to be authorized by the authorization of the original filed document or plan to which they relate and  
 219 may be filed by the corporation without further action by the board of directors or the members.

220 6. The provisions of subdivisions 1, 2, and 5 of this subsection shall not be considered by the  
 221 Commission in deciding whether the terms of a plan or filed document comply with the requirements of  
 222 law.

223 § 13.1-810. Notices and other communications.

224 For purposes of this Act ~~chapter~~, except for notice to or from the Commission:

225 A. Notice shall be in writing except that oral notice of any meeting of the board of directors may be  
 226 given if expressly authorized by the articles of incorporation or bylaws. ~~Notice by electronic~~  
 227 ~~transmission is written notice.~~

228 B. ~~Notice Unless otherwise agreed between the sender and the recipient, words in a notice or other~~  
 229 ~~communication shall be in the English language. A notice or other communication may be~~  
 230 ~~communicated in person; by mail or other given or sent by any method of delivery; or by telephone,~~  
 231 ~~voice mail or other except that an electronic means transmission shall be in accordance with this~~  
 232 ~~section. If these forms methods of personal notice delivery are impracticable, a notice or other~~  
 233 ~~communication may be communicated by publication in a newspaper of general circulation in the area~~  
 234 ~~where the notice is intended to be given, or by radio, television, or other form of public broadcast~~  
 235 ~~communication in the area where notice is intended to be given.~~

236 C. ~~Written notice by a domestic or foreign corporation to its member, if in a comprehensible form, is~~  
 237 ~~effective (i) upon deposit in the United States mail, if mailed postpaid and correctly addressed to the~~  
 238 ~~member's address shown in the corporation's current record of members, or (ii) when electronically~~  
 239 ~~transmitted to the member in a manner authorized by the member.~~

240 D. ~~Written notice~~ *Notice or other communication* to a domestic or foreign corporation, authorized to  
 241 transact business in the Commonwealth, may be *addressed delivered* to its registered agent at its  
 242 registered office or to the *secretary of the* corporation ~~or its secretary~~ at its principal office shown in its  
 243 most recent annual report or, in the case of a foreign corporation that has not yet ~~filed~~ *delivered* an

244 annual report, in its application for a certificate of authority.

245 *D. Notice or other communication may be delivered by electronic transmission if consented to by the*  
 246 *recipient or if authorized by subsection K.*

247 *E. Any consent under subsection D may be revoked by the person who consented by written or*  
 248 *electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked*  
 249 *if (i) the corporation is unable to deliver two consecutive electronic transmissions given by the*  
 250 *corporation in accordance with such consent and (ii) such inability becomes known to the secretary or*  
 251 *an assistant secretary of the corporation or other person responsible for the giving of notice or other*  
 252 *communications. The inadvertent failure to treat such inability as a revocation shall not invalidate any*  
 253 *meeting or other action.*

254 *F. Unless otherwise agreed between the sender and the recipient, an electronic transmission is*  
 255 *received when:*

256 *1. It enters an information processing system that the recipient has designated or uses for the*  
 257 *purpose of receiving electronic transmissions or information of the type sent, and from which the*  
 258 *recipient is able to retrieve the electronic transmission; and*

259 *2. It is in a form capable of being processed by that system.*

260 *G. Receipt of an electronic acknowledgment from an information processing system described in*  
 261 *subdivision F 1 establishes that an electronic transmission was received. However, such receipt of an*  
 262 *electronic acknowledgment, by itself, does not establish that the content sent corresponds to the content*  
 263 *received.*

264 *H. An electronic transmission is received under this section even if no individual is aware of its*  
 265 *receipt.*

266 ~~EI. Except as provided in subsection C, written notice~~ *Notice or other communication, if in a*  
 267 *comprehensible form or manner, is effective at the earliest of the following:*

268 *1. ~~When received~~ If in physical form, the earliest of when it is actually received or when it is left at:*  
 269 *a. A member's address shown on the corporation's record of members maintained by the corporation*  
 270 *pursuant to subsection C of § 13.1-932;*

271 *b. A director's residence or usual place of business;*

272 *c. The corporation's principal place of business; or*

273 *d. The corporation's registered office when left with the corporation's registered agent;*

274 *2. Five days after its deposit in the United States mail, if ~~If~~ mailed ~~postpaid~~ postage prepaid and*  
 275 *correctly addressed to a member, upon deposit in the United States mail; ~~or~~*

276 *3. ~~On the date shown on the return receipt~~ If mailed by United States mail postage prepaid and*  
 277 *correctly addressed to a recipient other than a member, the earliest of when it is actually received or:*  
 278 *(i) if sent by registered or certified mail, return receipt requested, ~~and~~ the date shown on the receipt is,*  
 279 *signed by or on behalf of the addressee; or (ii) five days after it is deposited in the mail;*

280 *4. If an electronic transmission, when it is received as provided in subsection F; and*

281 ~~F5. Oral notice is effective If oral, when communicated if communicated in a comprehensible~~  
 282 ~~manner.~~

283 *J. A notice or other communication may be in the form of an electronic transmission that cannot be*  
 284 *directly reproduced in paper form by the recipient through an automated process used in conventional*  
 285 *commercial practice only if (i) the electronic transmission is otherwise retrievable in perceivable form*  
 286 *and (ii) the sender and the recipient have consented in writing to the use of such form of electronic*  
 287 *transmission.*

288 ~~GK. When~~ *If this Act chapter prescribes notice requirements for notices or other communications in*  
 289 *particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe*  
 290 *notice requirements for notices or other communications not inconsistent with this section or other*  
 291 *provisions of this Act chapter, those requirements govern. The articles of incorporation or bylaws may*  
 292 *authorize or require delivery of notices of meetings of directors by electronic transmission.*

293 *H. Without limiting the manner by which notice otherwise may be given effectively to members, any*  
 294 *notice to members given by the corporation under any provision of this Act, the articles of*  
 295 *incorporation, or the bylaws, shall be effective if given by a form of electronic transmission consented*  
 296 *to by the member to whom the notice is given. Any such consent shall be revocable by the member by*  
 297 *written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is*  
 298 *unable to deliver by electronic transmission two consecutive notices given by the corporation in*  
 299 *accordance with such consent and (ii) such inability becomes known to the secretary or an assistant*  
 300 *secretary of the corporation or other person responsible for the giving of notice, provided, however, that*  
 301 *the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other*  
 302 *action. Notice given pursuant to this subsection shall be deemed given: (a) if by facsimile*  
 303 *telecommunication, when directed to a number at which the member has consented to receive notice; (b)*  
 304 *if by electronic mail, when directed to an electronic mail address at which the member has consented to*

305 receive notice; (e) if by a posting on an electronic network together with separate notice to the member  
306 of such specific posting when such notice is directed to the record address of the member or to such  
307 other address at which the member has consented to receive notice, upon the later of such posting or the  
308 giving of such separate notice; and (d) if by any other form of electronic transmission, when consented  
309 to by the member. An affidavit of the secretary or an assistant secretary or other agent of the  
310 corporation that the notice has been given by a form of electronic transmission shall, in the absence of  
311 fraud, be prima facie evidence of the facts stated therein.

312 § 13.1-813. Hearing and finality of Commission action; injunctions.

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

321 B. No court within or without the Commonwealth shall have jurisdiction to enjoin or delay the  
322 holding of any meeting of directors or members for the purpose of authorizing or consummating any  
323 amendment, merger, domestication, or termination of corporate existence, or the execution or filing with  
324 the Commission of any articles or other documents for such purpose, except pursuant to subsection *E* of  
325 § 13.1-845 or for fraud. No court within or without the Commonwealth, except the Supreme Court by  
326 way of appeal as authorized by law, shall have jurisdiction to review, reverse, correct or annul any  
327 action of the Commission, within the scope of its authority, with regard to any articles, certificate, order,  
328 objection or petition, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or  
329 interfere with the Commission in the performance of its official duties.

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

334 § 13.1-823. Bylaws.

335 A. The incorporators or board of directors of a corporation shall adopt initial bylaws for the  
336 corporation.

337 B. The bylaws of a corporation may contain any provision for managing the business and regulating  
338 the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

339 § 13.1-842. Notice of meeting.

340 A. 1. A corporation shall notify members of the date, time and place of each annual and special  
341 members' meeting. Such notice shall be given no less than 10 nor more than 60 days before the meeting  
342 date except that notice of a members' meeting to act on an amendment of the articles of incorporation, a  
343 plan of merger, domestication, a proposed sale of assets pursuant to § 13.1-900, or the dissolution of the  
344 corporation shall be given not less than 25 nor more than 60 days before the meeting date. Unless this  
345 Act or the articles of incorporation require otherwise, the corporation is required to give notice only to  
346 members entitled to vote at the meeting.

347 2. In lieu of delivering notice as specified in subdivision A 1, the corporation may publish such  
348 notice at least once a week for two successive calendar weeks in a newspaper published in the city or  
349 county in which the registered office is located, or having a general circulation therein, the first  
350 publication to be not more than 60 days, and the second not less than seven days before the date of the  
351 meeting.

352 B. Unless this Act or the articles of incorporation require otherwise, notice of an annual meeting  
353 need not state the purpose or purposes for which the meeting is called.

354 C. Notice of a special meeting shall state the purpose or purposes for which the meeting is called.

355 D. If not otherwise fixed under § 13.1-840 or 13.1-844, the record date for determining members  
356 entitled to notice of and to vote at an annual or special meeting is the day before the effective date of  
357 the notice to members.

358 E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different  
359 date, time, or place, notice need not be given if the new date, time, or place is announced at the meeting  
360 before adjournment. If a new record date for the adjourned meeting is or shall be fixed under §  
361 ~~13.1-845~~ 13.1-844, however, notice of the adjourned meeting shall be given under this section to  
362 persons who are members as of the new record date.

363 § 13.1-844.2. Remote participation in annual and special meetings.

364 A. Members may participate in any meeting of members by means of remote communication to the  
365 extent the board of directors authorizes such participation for members. Participation by means of  
366 remote communication shall be subject to such guidelines and procedures the board of directors adopts,

367 *and shall be in conformity with subsection B.*

368 *B. Members participating in a members' meeting by means of remote communication shall be deemed*  
 369 *present and may vote at such a meeting if the corporation has implemented reasonable measures to:*

370 *1. Verify that each person participating remotely is a member; and*

371 *2. Provide such members a reasonable opportunity to participate in the meeting and to vote on*  
 372 *matters submitted to the members, including an opportunity to communicate, and to read or hear the*  
 373 *proceedings of the meeting, substantially concurrently with such proceedings.*

374 *§ 13.1-845. Members' list for meeting.*

375 *A. The officer or agent having charge of the record of members of* ~~After fixing a record date for a~~  
 376 *meeting, a corporation shall make, at least 10 days before each meeting of members, a complete prepare*  
 377 *an alphabetical list of the names of all its members who are entitled to notice of a members' meeting. If*  
 378 *the board of directors fixes a different record date to determine the members entitled to vote at such the*  
 379 *meeting or any adjournment thereof, with the address of, a corporation shall also prepare an*  
 380 *alphabetical list of the names of all its members who are entitled to vote at the meeting. A list shall be*  
 381 *arranged by voting group, and show the address of each member. The list of members entitled to vote*  
 382 *shall be arranged by voting group and within each voting group by class.*

383 *B. For a period of 10 days prior to the meeting, the* ~~The members' list of members for notice shall be~~  
 384 *kept on file at the registered office of the corporation or at its principal office and shall be subject to*  
 385 *available for inspection by any member, beginning two business days after notice of the meeting is*  
 386 *given for which the list was prepared and continuing through the meeting, at any time during usual*  
 387 *business hours the corporation's principal office or at a place identified in the meeting notice in the*  
 388 *county or city where the meeting will be held. Such A members' list for voting shall also be produced and*  
 389 *kept open at the time and place of the meeting and shall be subject to the* ~~be similarly available for~~  
 390 *inspection of any member during the whole time of the meeting for the purposes thereof promptly after*  
 391 *the record date for voting. The original record of members shall be prima facie evidence as to who are*  
 392 *the members entitled to examine such list or records or to vote at any meeting of members. The right of*  
 393 *the member of a corporation A member, or the member's agent or attorney, is entitled on written*  
 394 *demand to inspect such list prior to a meeting shall be and, subject to the limitations requirements set*  
 395 *forth in subsection C of § 13.1-933, to copy a list, during the regular business hours and at the*  
 396 *member's expense, during the period it is available for inspection.*

397 *C. The corporation shall make the list of members entitled to vote available at the meeting, and any*  
 398 *member, or the member's agent or attorney, is entitled to inspect the list at any time during the meeting*  
 399 *or any adjournment.*

400 *CD. If the requirements of this section have not been substantially complied with, the meeting shall,*  
 401 *on the demand of any member in person or by proxy, be adjourned until the requirements are complied*  
 402 *with. Refusal or failure corporation refuses to prepare or make available the* ~~allow a member, the~~  
 403 *member's agent, or the member's attorney to inspect a members' list does not affect the validity of*  
 404 *action taken at before or at the meeting prior to the making of any such demand, but any action taken*  
 405 *by the members after the making of any such demand shall be invalid and of no effect, or to copy a list*  
 406 *as permitted by subsection B, the circuit court of the county or city where the corporation's principal*  
 407 *office, or if none in the Commonwealth its registered office, is located, on application of the member,*  
 408 *may summarily order the inspection or copying at the corporation's expense and may postpone the*  
 409 *meeting for which the list was prepared until the inspection or copying is complete.*

410 *E. Refusal or failure to prepare or make available a members' list does not affect the validity of*  
 411 *action taken at the meeting.*

412 *§ 13.1-847. Proxies.*

413 *A. A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws*  
 414 *otherwise provide, by proxy.*

415 *B. A member or the member's agent or attorney-in-fact may appoint a proxy to vote or otherwise act*  
 416 *for the member by signing an appointment form or by an electronic transmission. An electronic*  
 417 *transmission shall contain or be accompanied by information from which one can determine that the*  
 418 *member, the member's agent or the member's attorney-in-fact authorized the transmission. Any copy,*  
 419 *facsimile telecommunications or other reliable reproduction of the writing or transmission created*  
 420 *pursuant to this subsection may be substituted or used in lieu of the original writing or transmission for*  
 421 *any and all purposes for which the original writing or transmission could be used, provided that such*  
 422 *copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire*  
 423 *original writing or transmission.*

424 *C. An appointment of a proxy is effective when a signed appointment form or an electronic*  
 425 *transmission of the appointment is received by the inspectors of election or the officer or agent of the*  
 426 *corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is*  
 427 *expressly provided in the appointment form.*

428 D. An appointment of a proxy is revocable unless the appointment form or electronic transmission  
429 states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with  
430 an interest include the appointment of:

- 431 1. A creditor of the corporation who extended it credit under terms requiring the appointment;
- 432 2. An employee of the corporation whose employment contract requires the appointment; or
- 433 3. A party to a voting agreement created under § 13.1-852.2.

434 E. The death or incapacity of the member appointing a proxy does not affect the right of the  
435 corporation to accept the proxy's authority unless notice of the death or incapacity is received by the  
436 secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's  
437 authority under the appointment.

438 F. An appointment made irrevocable under subsection D is revoked when the interest with which it  
439 is coupled is extinguished.

440 G. Subject to § 13.1-848 and to any express limitation on the proxy's authority stated in the  
441 appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other  
442 action as that of the member making the appointment.

443 H. Any fiduciary who is entitled to vote any membership interest may vote such membership interest  
444 by proxy.

445 § 13.1-847.1. Voting procedures and inspectors of elections.

446 A. A corporation may appoint one or more inspectors to act at a meeting of members and make a  
447 written report of the inspector's determinations. The corporation may designate one or more persons as  
448 alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at  
449 a meeting of members, the person presiding at the meeting shall appoint one or more inspectors to act at  
450 the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath  
451 faithfully to execute the duties of inspector with strict impartiality and according to the best of his  
452 ability.

453 B. The inspectors shall (i) ascertain the number of members and the voting power of each, (ii)  
454 determine the number of the members represented at a meeting and the validity of proxies and ballots,  
455 (iii) count all votes, (iv) determine, and retain for a reasonable period a record of the disposition of, any  
456 challenges made to any determination by the inspectors, and (v) certify their determination of the  
457 number of members represented at the meeting and their count of all votes. The inspectors may appoint  
458 or retain other persons or entities to assist the inspectors in the performance of their duties. *In any court*  
459 *proceeding there shall be a rebuttable presumption that the report of the inspectors is correct.*

460 C. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by  
461 the inspectors after the closing of the polls unless the circuit court of the city or county where the  
462 corporation's principal office is located or, if none in the Commonwealth, where its registered office is  
463 located, upon application by a member, shall determine otherwise.

464 D. In determining the validity of proxies and ballots and in counting the votes, the inspectors shall  
465 be limited to an examination of the proxies, any envelopes submitted with those proxies, any  
466 information provided in accordance with subsection B of § 13.1-847, ballots, and the regular books and  
467 records of the corporation. If the inspectors consider other reliable information for the limited purpose  
468 permitted herein, they shall specify, at the time that they make their certification pursuant to clause (v)  
469 of subsection B, the precise information that they considered, including the person or persons from  
470 whom they obtained the information, when the information was obtained, the means by which the  
471 information was obtained, and the basis for their belief that such information is accurate and reliable.

472 E. If authorized by the board of directors, any member vote to be taken by written ballot may be  
473 satisfied by a ballot submitted by electronic transmission by the member or the member's proxy,  
474 provided that any such electronic transmission shall either set forth or be submitted with information  
475 from which it may be determined that the electronic transmission was authorized by the member or the  
476 member's proxy.

477 § 13.1-855. Number and election of directors.

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

484 B. The members may adopt a bylaw fixing the number of directors and may direct that such bylaw  
485 not be amended by the board of directors. ~~If a bylaw states a fixed number of directors and the board of~~  
486 ~~directors has the right to amend the bylaw, it may by amendment to the bylaw increase or decrease the~~  
487 ~~number of directors, but to the extent that the corporation has members with voting privileges only the~~  
488 ~~members may increase or decrease by more than 30 percent the number of directors last elected by the~~  
489 ~~members or, if the directors' terms are staggered pursuant to § 13.1-858, the number of directors of all~~



490 classes immediately following the most recent election of directors by the members.

491 C. The articles of incorporation or bylaws may establish a variable range for the size of the board of  
 492 directors by fixing a minimum and maximum number of directors. If a variable range is established, the  
 493 number of directors may be fixed or changed from time to time, within the minimum and maximum, by  
 494 the members or the board of directors. However, to the extent that the corporation has members with  
 495 voting privileges, only the members may change the range for the size of the board of directors or  
 496 change from a fixed to a variable-range size board or vice versa.

497 D. Directors shall be elected or appointed in the manner provided in the articles of incorporation. If  
 498 the corporation has members with voting privileges, directors shall be elected at the first annual  
 499 members' meeting and at each annual meeting thereafter unless their terms are staggered under  
 500 § 13.1-858.

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

502 § 13.1-866. Notice of board of directors' meetings.

503 A. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of  
 504 directors may be held without notice of the date, time, place, or purpose of the meeting.

505 B. Special meetings of the board of directors shall be held upon such notice as is prescribed in the  
 506 articles of incorporation or bylaws, or when not inconsistent with the articles of incorporation or bylaws,  
 507 by resolution of the board of directors. The notice need not describe the purpose of the special meeting  
 508 unless required by the articles of incorporation or bylaws.

509 C. Notwithstanding any provision of this Act to the contrary, a notice of the date, time, place or  
 510 purpose of a regular or special meeting of the board of directors may be given by a form of electronic  
 511 transmission consented to by the director to whom the notice is given. Any such consent of a director  
 512 shall be revocable by the director by written notice to the corporation. Any such consent shall be  
 513 deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive  
 514 notices given by the corporation in accordance with such consent and (ii) such inability becomes known  
 515 to the secretary or other person responsible for the giving of notice; however, the inadvertent failure to  
 516 treat such inability as a revocation shall not invalidate any meeting or other action. Notice given by  
 517 electronic transmission shall be deemed given: (a) if by facsimile telecommunication, when directed to a  
 518 number at which the director has consented to receive notice; (b) if by electronic mail, when directed to  
 519 an electronic mail address at which the director has consented to receive notice; (c) if by a posting on  
 520 an electronic network together with separate notice to the director of such specific posting when such  
 521 notice is directed to an address at which the director has consented to receive notice, upon the later of  
 522 such posting or the giving of such separate notice; and (d) if by any other form of electronic  
 523 transmission, when consented to by the director. An affidavit of the secretary or other agent of the  
 524 corporation that the notice has been given by a form of electronic transmission shall, in the absence of  
 525 fraud, be prima facie evidence of the facts stated therein.

526 § 13.1-878. Advance for expenses.

527 A. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a  
 528 party to a proceeding in advance of final disposition of the proceeding if:

529 1. The director furnishes the corporation a *signed* written statement of his good faith belief that he  
 530 has met the standard of conduct described in § 13.1-876;

531 2. The director furnishes the corporation a *signed* written undertaking, executed personally or on his  
 532 behalf, to repay any funds advanced if he is not entitled to mandatory indemnification under § 13.1-877  
 533 and it is ultimately determined under § 13.1-879.1 or 13.1-880 that he has not met the relevant standard  
 534 of conduct.

535 B. The undertaking required by subdivision A 2 shall be an unlimited general obligation of the  
 536 director but need not be secured and may be accepted without reference to financial ability to make  
 537 repayment.

538 C. Authorizations of payments under this section shall be made by:

539 1. The board of directors:

540 a. If there are two or more disinterested directors, by a majority vote of all the disinterested directors,  
 541 a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a  
 542 committee of two or more disinterested directors appointed by such a vote; or

543 b. If there are fewer than two disinterested directors, by the vote necessary for action by the board in  
 544 accordance with subsection C of § 13.1-868, in which authorization directors who do not qualify as  
 545 disinterested directors may participate; or

546 2. The members, but any membership interest under the control of a director who at the time does  
 547 not qualify as a disinterested director may not be voted on the authorization.

548 § 13.1-883. Application of article.

549 A. Unless the articles of incorporation or bylaws expressly provide otherwise, any authorization of  
 550 indemnification in the articles of incorporation or bylaws shall not be deemed to prevent the corporation

551 from providing the indemnity permitted or mandated by this article. *A corporation, by a provision in its*  
552 *articles of incorporation or bylaws or in a resolution adopted or contract approved by its board of*  
553 *directors or members, may obligate itself in advance of the act or omission giving rise to a proceeding*  
554 *to provide indemnification in accordance with § 13.1-876 and advance funds to pay for or reimburse*  
555 *expenses in accordance with § 13.1-878. Any such obligatory provision shall be deemed to satisfy the*  
556 *requirements for authorization referred to in subsection C of § 13.1-878 and subsection C of § 13.1-880.*

557 B. Any corporation shall have power to make any further indemnity, including indemnity with  
558 respect to a proceeding by or in the right of the corporation, and to make additional provision for  
559 advances and reimbursement of expenses, to any director or officer that may be authorized by the  
560 articles of incorporation or any bylaw made by the members or any resolution adopted, before or after  
561 the event, by the members, except an indemnity against (i) such person's willful misconduct, or (ii) a  
562 knowing violation of the criminal law. *Any such provision that obligates the corporation to provide*  
563 *indemnification to the fullest extent permitted by law shall be deemed, unless the articles of*  
564 *incorporation or any such bylaw or resolution expressly provides otherwise, also to obligate the*  
565 *corporation to advance funds to pay for or reimburse expenses to the fullest extent permitted by law in*  
566 *accordance with § 13.1-878 except that the applicable standard shall be conduct that does not constitute*  
567 *willful misconduct or a knowing violation of criminal law, rather than the standard of conduct*  
568 *prescribed in § 13.1-876. Unless the articles of incorporation, or any such bylaw or resolution expressly*  
569 *provides otherwise, any determination as to the right to any further indemnity shall be made in*  
570 *accordance with subsection B of § 13.1-880. Each such indemnity may continue as to a person who has*  
571 *ceased to have the capacity referred to above and may inure to the benefit of the heirs, executors and*  
572 *administrators of such a person.*

573 C. The provisions of this article and Article 8 (§ 13.1-853 et seq.) of this Act shall apply to the same  
574 extent to any cooperative organized under the Code of Virginia.

575 D. No right provided to any person pursuant to this section may be reduced or eliminated by any  
576 amendment of the articles of incorporation or bylaws with respect to any act or omission occurring  
577 before such amendment.

578 E. This article does not limit a corporation's power to pay or reimburse expenses incurred by a  
579 director or an officer in connection with his appearance as a witness in a proceeding at a time when he  
580 is not a party.

581 F. This article does not limit a corporation's power to indemnify, advance expenses to, or provide or  
582 maintain insurance on behalf of an employee or agent who is not a director or officer.  
583 § 13.1-939. Saving provision.

584 A. Except as provided in subsection B, the repeal of a statute by this Act does not affect:

585 1. The operation of the statute or any action taken under it before its repeal;

586 2. Any ratification, right, remedy, privilege, obligation or liability acquired, accrued, or incurred  
587 under the statute before its repeal;

588 3. Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the  
589 violation, before its repeal; or

590 4. Any proceeding commenced, or reorganization or dissolution authorized by the board of directors,  
591 under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed  
592 in accordance with the statute as if it had not been repealed.

593 B. If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by  
594 this Act, the penalty or punishment if not already imposed shall be imposed in accordance with this Act.

595 C. *If any provision of this chapter is deemed to modify, limit, or supersede the federal Electronic*  
596 *Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., the provisions of this*  
597 *chapter shall control to the maximum extent permitted by 15 U.S.C. § 7002(a)(2).*