

12100013D

HOUSE BILL NO. 610

Offered January 11, 2012

Prefiled January 10, 2012

A *BILL to amend and reenact §§ 13.1-604, 13.1-743, 13.1-804, and 13.1-904 of the Code of Virginia, relating to the dissolution of corporations.*

Patron—LeMunyon

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-604, 13.1-743, 13.1-804, and 13.1-904 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-604. Filing requirements.

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

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

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

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

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

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

1. By the chairman or any vice-chairman of the board of directors, the president, or any other of its officers authorized to act on behalf of the corporation; *however, articles of dissolution shall be signed in the name of the corporation by such an individual who is also listed as a director or principal officer of the corporation on the most recent annual report filed with the Commission by the corporation, or by an incorporator if the corporation has not yet filed and is not permitted to file an annual report;*

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

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

G. Any annual report required to be filed by § 13.1-775 shall be signed in the name of the corporation by an officer or director listed in the report.

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

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

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

K. The Commission may accept the electronic filing of any information required or permitted to be filed by this chapter and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § 59.1-496.

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

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

2. The facts may include:

INTRODUCED

HB610

59 a. Any of the following that are available in a nationally recognized news or information medium
60 either in print or electronically: statistical or market indices, market prices of any security or group of
61 securities, interest rates, currency exchange rates or similar economic or financial data;
62 b. A determination or action by any person or body, including the corporation or any other party to a
63 plan or filed document; or
64 c. The terms of, or actions taken under, an agreement to which the corporation is a party, or any
65 other agreement or document.

66 3. As used in this subsection:
67 a. "Filed document" means a document filed with the Commission under § 13.1-619 or Article 11
68 (§ 13.1-705 et seq.) or 12 (§ 13.1-715.1 et seq.) ~~of this chapter~~; and
69 b. "Plan" means a plan of merger or share exchange.

70 4. The following terms of a plan or filed document may not be made dependent on facts outside the
71 plan or filed document:
72 a. The name and address of any person required in a filed document;
73 b. The registered office of any entity required in a filed document;
74 c. The registered agent of any entity required in a filed document;
75 d. The number of authorized shares and designation of each class or series of shares;
76 e. The effective date of a filed document; and
77 f. Any required statement in a filed document of the date on which the underlying transaction was
78 approved or the manner in which that approval was given.

79 5. If a term of a filed document is made dependent on a fact objectively ascertainable outside of the
80 filed document, and that fact is not objectively ascertainable by reference to a source described in
81 subdivision 2 a of this subsection or a document that is a matter of public record, or the affected
82 shareholders have not received notice of the fact from the corporation, then the corporation shall file
83 with the Commission articles of amendment setting forth the fact promptly after the time when the fact
84 referred to is first objectively ascertainable or thereafter changes. Articles of amendment under this
85 subdivision are deemed to be authorized by the authorization of the original filed document or plan to
86 which they relate and may be filed by the corporation without further action by the board of directors or
87 the shareholders.

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

91 § 13.1-743. Articles of dissolution.

92 A. At any time after dissolution is approved by the shareholders, the corporation may dissolve by
93 filing with the Commission articles of dissolution setting forth:
94 1. The name of the corporation;
95 2. The date dissolution was authorized;
96 3. Either (i) a statement that dissolution was authorized by unanimous consent of the shareholders, or
97 (ii) a statement that the proposed dissolution was submitted to the shareholders by the board of directors
98 in accordance with this article, and a statement of:
99 a. The designation, number of outstanding shares, and number of votes entitled to be cast by each
100 voting group entitled to vote separately on dissolution; and
101 b. Either the total number of votes cast for and against dissolution by each voting group entitled to
102 vote separately on dissolution or the total number of undisputed votes cast for dissolution separately by
103 each voting group and a statement that the number cast for dissolution by each voting group was
104 sufficient for approval by that voting group.

105 B. If the Commission finds (i) that the articles of dissolution comply with the requirements of law,
106 (ii) *that a person signing the articles of dissolution pursuant to the requirements of subdivision F 1 of*
107 *§ 13.1-604 is listed as a director or principal officer of the corporation on the most recent annual*
108 *report filed with the Commission by the corporation, or is an incorporator if the corporation has not yet*
109 *filed and is not permitted to file an annual report*, and (iii) that the corporation has paid all fees and
110 taxes, and delinquencies thereof, imposed by laws administered by the Commission, it shall issue a
111 certificate of dissolution.

112 C. A corporation is dissolved upon the effective date of the certificate of dissolution.

113 D. For purposes of §§ 13.1-742 through 13.1-746.2, "dissolved corporation" means a corporation
114 whose articles of dissolution have become effective and includes a successor entity to which the
115 remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

116 § 13.1-804. Filing requirements.

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

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

120 C. The document shall contain the information required by this Act. It may contain other information

as well.

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

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

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

1. By the chairman or any vice-chairman of the board of directors, the president, or any other of its officers authorized to act on behalf of the corporation; *however, articles of dissolution shall be signed in the name of the corporation by such an individual who is also listed as a director or principal officer of the corporation on the most recent annual report filed with the Commission by the corporation, or by an incorporator if the corporation has not yet filed and is not permitted to file an annual report;*

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

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

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

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

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

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

K. The Commission may accept the electronic filing of any information required or permitted to be filed by this Act and may prescribe the methods of execution, recording, reproduction and certification of electronically filed information pursuant to § 59.1-496.

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

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

2. The facts may include:

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

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

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

3. As used in this subsection:

a. "Filed document" means a document filed with the Commission under § 13.1-819 or Article 10 (§ 13.1-884 et seq.) or 11 (~~§ 13.1-894~~ *13.1-893.1* et seq.) ~~of this Act~~; and

b. "Plan" means a plan of merger.

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

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

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

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

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

e. The effective date of a filed document; and

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

5. If a term of a filed document is made dependent on a fact objectively ascertainable outside of the

182 filed document and that fact is not objectively ascertainable by reference to a source described in
183 subdivision 2a or to a document that is a matter of public record, or if the affected members have not
184 received notice of the fact from the corporation, then the corporation shall file with the Commission
185 articles of amendment setting forth the fact promptly after the time when the fact referred to is first
186 objectively ascertainable or thereafter changes. Articles of amendment under this subdivision are deemed
187 to be authorized by the authorization of the original filed document or plan to which they relate and
188 may be filed by the corporation without further action by the board of directors or the members.

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

192 § 13.1-904. Articles of dissolution.

193 A. At any time after dissolution is approved, the corporation may dissolve by filing with the
194 Commission articles of dissolution setting forth:

195 1. The name of the corporation.

196 2. The date dissolution was authorized.

197 3. Where there are members having voting rights, either (i) a statement that dissolution was
198 authorized by unanimous consent of the members, or (ii) a statement that the proposed dissolution was
199 submitted to the members by the board of directors in accordance with this article and a statement of (a)
200 the existence of a quorum of each voting group entitled to vote separately on dissolution and (b) either
201 the total number of votes cast for and against dissolution by each voting group entitled to vote
202 separately on dissolution or the total number of undisputed votes cast for dissolution separately by each
203 voting group and a statement that the number cast for dissolution by each voting group was sufficient
204 for approval by that voting group.

205 4. Where there are no members, or no members having voting rights, then a statement of that fact,
206 the date of the meeting of the board of directors at which the dissolution was authorized and a statement
207 of the fact that dissolution was authorized by the vote of a majority of the directors in office.

208 B. If the Commission finds (i) that the articles of dissolution comply with the requirements of law,
209 (ii) *that a person signing the articles of dissolution pursuant to the requirements of subdivision F 1 of*
210 *§ 13.1-804 is listed as a director or principal officer of the corporation on the most recent annual*
211 *report filed with the Commission by the corporation, or is an incorporator if the corporation has not yet*
212 *filed and is not permitted to file an annual report,* and (iii) that the corporation has paid all required
213 fees and taxes imposed by laws administered by the Commission, it shall issue a certificate of
214 dissolution.

215 C. A corporation is dissolved upon the effective date of the certificate of dissolution.

216 D. For purposes of §§ 13.1-902 through 13.1-908.2, "dissolved corporation" means a corporation
217 whose articles of dissolution have become effective; the term includes a successor entity to which the
218 remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.