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**HOUSE BILL NO. 2176**

Offered January 14, 2015

Prefiled January 14, 2015

A *BILL to amend and reenact §§ 13.1-604, 13.1-614, 13.1-615, 13.1-615.1, 13.1-618, 13.1-706, 13.1-710, 13.1-722.5, 13.1-722.7, 13.1-722.12, 13.1-722.13, 13.1-722.14, 13.1-754, 13.1-759, 13.1-760, 13.1-762, 13.1-766.1, 13.1-767, 13.1-769, 13.1-769.1, 13.1-804, 13.1-810.1, 13.1-813, 13.1-815, 13.1-818, 13.1-885, 13.1-898.5, 13.1-898.7, 13.1-916, 13.1-921, 13.1-922, 13.1-928.1, 13.1-929, 13.1-931, 13.1-931.1, 13.1-941.01 through 13.1-944, 13.1-944.5, 13.1-944.6, and 13.1-944.7 of the Code of Virginia, relating to the Virginia Stock and Nonstock Corporation Acts.*

Patrons—Joannou, Kilgore and Ware

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 13.1-604, 13.1-614, 13.1-615, 13.1-615.1, 13.1-618, 13.1-706, 13.1-710, 13.1-722.5, 13.1-722.7, 13.1-722.12, 13.1-722.13, 13.1-722.14, 13.1-754, 13.1-759, 13.1-760, 13.1-762, 13.1-766.1, 13.1-767, 13.1-769, 13.1-769.1, 13.1-804, 13.1-810.1, 13.1-813, 13.1-815, 13.1-818, 13.1-885, 13.1-898.5, 13.1-898.7, 13.1-916, 13.1-921, 13.1-922, 13.1-928.1, 13.1-929, 13.1-931, 13.1-931.1, 13.1-941.01 through 13.1-944, 13.1-944.5, 13.1-944.6, and 13.1-944.7 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;

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

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

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59 apply:

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

64 2. The facts may include:

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

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

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

72 3. As used in this subsection:

73 a. "Filed document" means a document filed with the Commission under § 13.1-619 or Article 11  
74 (§ 13.1-705 et seq.) or 12 (§ 13.1-715.1 et seq.) of this chapter; and

75 b. "Plan" means a plan of merger or share exchange.

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

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

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

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

81 d. The number of authorized shares and designation of each class or series of shares;

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

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

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

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

97 **§ 13.1-614. Hearing and finality of Commission action; injunctions.**

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

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

115 C. Notwithstanding any provision of subsection A to the contrary, the Commission shall have the  
116 power to act upon a petition filed by a corporation at any time to correct Commission records so as to  
117 eliminate the effects of clerical errors and of filings made by a person or persons without authority to  
118 act for the corporation, *or of its own motion to correct Commission records so as to eliminate the effects*  
119 *of clerical errors committed by its staff.*

120 **§ 13.1-615. Fees to be collected by Commission; application of payment; 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. When the Commission receives payment of an annual registration fee assessed against a domestic or foreign corporation, such payment shall be applied against any unpaid annual registration fees previously assessed against such corporation, including any penalties incurred thereon, beginning with the assessment or penalty that has remained unpaid for the longest period of time.

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 *annual* 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 A domestic or foreign 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 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 annual registration fee for that assessed against it pursuant to subsection B of § 13.1-775.1 in any year if (i) the Commission issues or files any of the following types of certificate or instrument and (ii) the certificate or instrument is effective on or before the annual registration fee due date:~~

1. ~~A certificate of termination of corporate existence, a certificate of incorporation surrender, or a certificate of entity conversion for a domestic corporation;~~

2. ~~A certificate of withdrawal for a foreign corporation;~~

3. ~~A certificate of merger or an authenticated copy of an instrument of merger for a domestic or foreign corporation that has merged into a surviving domestic corporation or eligible entity or into a surviving foreign corporation or eligible entity; or~~

4. ~~An authenticated copy of an instrument of entity conversion for a foreign corporation that has converted to a different entity type.~~

The Commission shall cancel the *annual* registration fee assessments specified in this subsection that remain unpaid.

D. ~~Any A~~ 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 *registration fee* 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 *registration fee* assessment date pursuant to subsection B of § 13.1-775.1, shall have its *annual* registration fee reassessed to reflect the new number of authorized shares.

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

**§ 13.1-615.1. Charter and entrance fees for corporations.**

A. Every domestic corporation, upon the granting of its charter or upon domestication, shall pay a charter fee into the state treasury, and every foreign corporation, when it obtains from the State Corporation Commission a certificate of authority to transact business in the Commonwealth, shall pay an entrance fee into the state treasury. The fee in each case is to be ascertained and fixed as follows:

For any domestic or foreign corporation whose number of authorized shares is 1,000,000 or fewer shares - \$50 for each 25,000 shares or fraction thereof;

For any domestic or foreign corporation whose number of authorized shares is more than 1,000,000 shares - \$2,500.

182 B. For any foreign corporation that files articles of domestication and that had authority to transact  
 183 business in the Commonwealth at the time of such filing, the charter fee to be charged upon  
 184 domestication shall be an amount equal to the difference between the amount that would be required by  
 185 this section and the amount already paid as an entrance fee by such corporation.

186 C. For any foreign corporation that files an application for a certificate of authority to transact  
 187 business in the Commonwealth and that had previously surrendered its articles of incorporation as a  
 188 domestic corporation, the entrance fee to be charged upon obtaining a certificate of authority to transact  
 189 business in the Commonwealth shall be an amount equal to the difference between the amount that  
 190 would be required by this section and the amount already paid as a charter fee by such corporation.

191 D. Whenever by articles of amendment or articles of merger, the number of authorized shares of any  
 192 domestic or foreign corporation or of the surviving corporation is increased, the charter or entrance fee  
 193 to be charged shall be an amount equal to the difference between the amount already paid as a charter  
 194 or entrance fee by such corporation and the amount that would be required by this section to be paid if  
 195 the increased number of authorized shares were being stated at that time in the original articles of  
 196 incorporation.

197 E. *For any domestic limited liability company that files articles of entity conversion to become a*  
 198 *domestic corporation and that had previously converted from a domestic corporation, the charter fee to*  
 199 *be charged upon entity conversion shall be an amount equal to the difference between the amount that*  
 200 *would be required by this section and the amount already paid as a charter fee by the domestic limited*  
 201 *liability company when it was a domestic corporation.*

202 F. If no charter or entrance fee has been heretofore paid to the Commonwealth, the amount to be  
 203 paid shall be the same as would have to be paid on original incorporation or application for authority to  
 204 transact business.

205 **§ 13.1-618. Incorporators.**

206 One or more persons may act as *the incorporator or* incorporators of a corporation by signing and  
 207 ~~filing~~ delivering articles of incorporation ~~with~~ to the Commission for filing.

208 **§ 13.1-706. Amendment of articles of incorporation by directors.**

209 Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt  
 210 one or more amendments to the corporation's articles of incorporation without shareholder action:

- 211 1. To delete the names and addresses of the initial directors;
- 212 2. To delete the name ~~and address~~ of the initial registered agent or *the address of the initial*  
 213 *registered office, if a statement of change described in § 13.1-635 is on file with the Commission;*
- 214 3. If the corporation has only one class of shares outstanding:
  - 215 a. To change each issued and unissued authorized share of the class into a greater number of whole  
 216 shares of that class; or
  - 217 b. To increase the number of authorized shares of the class to the extent necessary to permit the  
 218 issuance of shares as a share dividend;
  - 219 4. To eliminate or change the par value of the shares of any class or series;
  - 220 5. To change the corporate name by substituting the word "corporation," "incorporated," "company,"  
 221 or "limited," or the abbreviation "corp.," "inc.," "co." or "Ltd.," or a similar word or abbreviation in the  
 222 name, or by adding, deleting, or changing a geographic attribution for the name;
  - 223 6. ~~To make any other~~ *If the corporation has or will become a holding company under § 13.1-719.1,*  
 224 *to change expressly permitted by this chapter to be made without shareholder action the corporate name*  
 225 *to the former name of the constituent corporation; or*
  - 226 7. If the corporation is registered as an open-end management investment company under the  
 227 Investment Company Act of 1940, to increase or decrease the aggregate number of shares or ~~classes the~~  
 228 *number of shares of any class or series of shares* within any class that the corporation is authorized to  
 229 issue; or
  - 230 8. *To make any other change expressly permitted by this chapter to be made without shareholder*  
 231 *action.*

232 **§ 13.1-710. Articles of amendment.**

233 A. A corporation amending its articles of incorporation shall file with the Commission articles of  
 234 amendment setting forth:

- 235 1. The name of the corporation;
- 236 2. The text of each amendment adopted or the information required by subdivision L 5 of  
 237 § 13.1-604;
- 238 3. If an amendment provides for an exchange, reclassification, or cancellation of issued shares,  
 239 provisions for implementing the amendment if not contained in the amendment itself, which may be  
 240 made dependent upon facts objectively ascertainable outside the articles of amendment in accordance  
 241 with subsection L of § 13.1-604;
- 242 4. The date of each amendment's adoption;
- 243 5. If an amendment was adopted by ~~the incorporators or~~ the board of directors *or the incorporators*

without shareholder approval, a statement that the amendment was duly approved by ~~the incorporators or~~ by the board of directors *or by a majority of the incorporators*, as the case may be, including the reason shareholder *and, if applicable, director* approval was not required; *and*

6. If an amendment was approved by the shareholders, either:

a. A statement that the amendment was adopted by unanimous consent of the shareholders, or

b. A statement that the amendment was proposed by the board of directors and submitted to the shareholders 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 amendment;

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

B. If the Commission finds that the articles of amendment comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of amendment.

**§ 13.1-722.5. Surrender of articles of incorporation upon domestication.**

A. Whenever a domestic corporation has adopted and approved, in the manner required by this article, a plan of domestication providing for the corporation to be domesticated under the laws of another jurisdiction, the corporation shall file with the Commission articles of incorporation surrender setting forth:

1. The name of the corporation;

2. ~~The corporation's new jurisdiction of incorporation~~ *in which the corporation is to be domesticated and the name of the corporation upon its domestication under the laws of that jurisdiction;*

3. The plan of domestication;

4. A statement that the articles of incorporation surrender are being filed in connection with the domestication of the corporation as a foreign corporation to be incorporated under the laws of another jurisdiction and that the corporation is surrendering its charter under the laws of this Commonwealth;

5. A statement:

a. That the plan was adopted by the unanimous consent of the shareholders; or

b. 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;

6. A statement that the ~~domestic~~ corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was incorporated in ~~this the~~ Commonwealth;

7. A mailing address to which the clerk may mail a copy of any process served on ~~him~~ *the clerk* under subdivision 6; and

8. A commitment *by the corporation* to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

B. If the Commission finds that the articles of incorporation surrender comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation surrender.

C. The corporation shall automatically cease to be a domestic corporation when the certificate of incorporation surrender becomes effective.

D. If the former domestic corporation intends to continue to transact business in the Commonwealth, then, within ~~thirty~~ 30 days after the effective date of the certificate of incorporation surrender, it shall deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth pursuant to § 13.1-759 together with a copy of its instrument of domestication and articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated or domesticated.

E. *Service of process on the clerk of the Commission is service of process on a former domestic corporation that has surrendered its charter pursuant to this section. Service on the clerk shall be made in accordance with § 12.1-19.1 and service on the former domestic corporation may be made in any other manner permitted by law.*

**§ 13.1-722.7. Abandonment of domestication.**

305 A. Unless *otherwise provided in* a plan of domestication of a domestic corporation ~~prohibits~~  
 306 ~~abandonment of the domestication without shareholder approval to become a foreign corporation~~, after  
 307 the domestication plan has been ~~authorized~~ *approved and adopted as required by this article*, and at any  
 308 time before the certificate of domestication filed in the other jurisdiction incorporation surrender has  
 309 become effective, the domestication may be abandoned *by the domestic corporation* without further  
 310 shareholder action *by the shareholders* in accordance with ~~the procedure~~ *any procedures* set forth in the  
 311 plan of domestication or, if ~~none~~ *is no such procedures* are set forth in the plan of domestication, in the  
 312 manner determined by the board of directors.

313 B. If a domestication is abandoned under subsection A after articles of incorporation surrender have  
 314 been filed with the Commission but before the certificate of incorporation surrender has become  
 315 effective, written notice that the domestication has been abandoned in accordance with this section shall  
 316 be filed with the Commission prior to the effective *time and* date of the certificate of incorporation  
 317 surrender. The notice shall take effect upon filing and the domestication shall be deemed abandoned and  
 318 shall not become effective.

319 C. If the domestication of a foreign corporation into ~~this the~~ Commonwealth is abandoned in  
 320 accordance with the laws of the ~~foreign~~ jurisdiction *in which the foreign corporation is incorporated*  
 321 after articles of domestication have been filed with the Commission but before the certificate of  
 322 domestication has become effective ~~in this Commonwealth~~, written notice that the domestication has  
 323 been abandoned shall be filed with the Commission prior to the effective *time and* date of the certificate  
 324 of domestication. The notice shall take effect upon filing and the domestication shall be deemed  
 325 abandoned and shall not become effective.

326 **§ 13.1-722.12. Articles of entity conversion.**

327 A. After the conversion of a corporation into a limited liability company has been adopted and  
 328 approved as required by this article, the converting entity shall file with the Commission articles of  
 329 entity conversion setting forth:

330 1. The name of the corporation immediately prior to the filing of the articles of entity conversion and  
 331 the name to which the name of the corporation is to be changed, which name shall satisfy the  
 332 requirements of the laws of this Commonwealth;

333 2. The plan of entity conversion, including the full text of the articles of organization of the  
 334 surviving entity that comply with the requirements of Chapter 12 (§ 13.1-1000 et seq.) ~~of this title~~, as  
 335 they will be in effect immediately after consummation of the conversion;

336 3. ~~A statement~~ *If the plan of entity conversion was adopted by the board of directors or the*  
 337 *incorporators without shareholder approval, a statement that the plan was duly approved by the board*  
 338 *of directors or by a majority of the incorporators, as the case may be, including the reason shareholder*  
 339 *and, if applicable, director approval was not required; and*

340 4. *If the plan of entity conversion was approved by the shareholders, either:*

341 a. ~~That~~ *A statement that the plan was adopted by the unanimous consent of the shareholders; or*

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

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

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

350 B. After the conversion of a limited liability company into a corporation has been adopted and  
 351 approved as required by this article, the converting entity shall file with the Commission articles of  
 352 entity conversion setting forth:

353 1. The name of the limited liability company immediately prior to the filing of the articles of entity  
 354 conversion and the name to which the name of the limited liability company is to be changed, which  
 355 name shall satisfy the requirements of § 13.1-630;

356 2. The plan of entity conversion, including the full text of the articles of incorporation of the  
 357 surviving entity that comply with the requirements of this chapter, as they will be in effect immediately  
 358 after the consummation of the conversion; and

359 3. A statement that the plan was adopted by the members of the limited liability company in the  
 360 manner provided in the limited liability company's operating agreement or articles of organization for  
 361 amendments, or, if no such provision is made in an operating agreement or articles of organization, by  
 362 the unanimous vote of the members of the limited liability company.

363 C. If the Commission finds that the articles of entity conversion comply with the requirements of law  
 364 and that all required fees have been paid, it shall issue a certificate of entity conversion.

365 **§ 13.1-722.13. Effect of entity conversion.**

366 A. When an entity conversion under this article becomes effective, with respect to that entity:

1. The title to all real estate and other property remains in the surviving entity without reversion or impairment;

2. The liabilities remain the liabilities of the surviving entity;

3. A ~~proceeding~~ pending *proceeding* may be continued by or against the surviving entity as if the conversion did not occur;

4. The articles of incorporation or articles of organization attached to the articles of conversion constitute the articles of incorporation or articles of organization of the surviving entity;

5. The shares or interests of the converting entity are reclassified into shares or interests in accordance with the plan of entity conversion; and the shareholders or members of the converting entity are entitled only to the rights provided in the plan of entity conversion or, in the case of a converting entity that is a corporation, to the rights, if any, they may have under subdivision A 5 of § 13.1-730; ~~and~~

6. The surviving entity is deemed to:

a. Be a corporation or limited liability company for all purposes;

b. Be the same corporation or limited liability company without interruption as the converting entity that existed prior to the conversion; ~~and~~

c. Have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized; and

7. The converting entity shall cease to be a corporation or a limited liability company, as the case may be, when the certificate of entity conversion becomes effective.

*B. Any shareholder or member of a converting entity who, prior to the entity conversion, was liable for the liabilities or obligations of the converting entity is not released from those liabilities or obligations by reason of the entity conversion.*

**§ 13.1-722.14. Abandonment of entity conversion.**

A. Unless *otherwise provided* in a plan of entity conversion of a corporation ~~prohibits abandonment of the conversion without shareholder approval~~ to become a limited liability company, after the ~~conversion plan~~ *has been authorized approved and adopted as required by this article*, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned by the corporation without further shareholder action by the shareholders in accordance with ~~the procedure any procedures~~ set forth in the plan of entity conversion or, if ~~none~~ *is no such procedures* are set forth in the plan of entity conversion, in the manner determined by the board of directors.

B. Unless ~~the limited liability company's articles of organization, operating agreement or otherwise provided~~ in a plan of entity conversion ~~prohibits abandonment of the conversion of a limited liability company to become a corporation~~, after the ~~conversion plan~~ *has been authorized approved and adopted as required by this article*, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned in the manner set forth in the plan of entity conversion or, if ~~none~~ *is no such procedures* are set forth in the plan of entity conversion, by ~~majority~~ a vote of the members, managers, or organizers of the limited liability company that is equal to or greater than the vote cast for entity conversion pursuant to subsection B of § 13.1-722.11.

C. If an entity conversion is abandoned under subsection A or B after articles of entity conversion have been filed with the Commission but before the certificate of entity conversion has become effective, written notice that the entity conversion has been abandoned in accordance with this section shall be filed with the Commission prior to the effective *time and* date of the certificate of entity conversion. The notice shall take effect upon filing and the entity conversion shall be deemed abandoned and shall not become effective.

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

A. A corporation that has ceased to exist *pursuant to this article* may apply to the Commission for reinstatement within five years thereafter unless the corporate existence was terminated by order of the Commission (i) upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law or (ii) entered pursuant to § 13.1-749 and the circuit court's decree directing dissolution contains no provision for reinstatement of corporate existence. ~~The Commission shall enter an order reinstating the~~

*B. To have its corporate existence upon receiving an annual report together with payment of a reinstated, the corporation shall provide the Commission with the following:*

1. An application for reinstatement, which shall include the identification number issued by the Commission to the corporation, and which may be in the form of a letter signed by an officer or director of the corporation, or which may be by affidavit signed by an agent of any shareholder's interests stating that after diligent search by such agent, no officer or director can be found;

2. A reinstatement fee of \$100 ~~plus all~~;

3. All annual registration fees and penalties that were due before the corporation ceased to exist and that would have ~~become due thereafter~~ *been assessed or imposed to the date of reinstatement* if the

428 corporation's existence had not ceased to exist been terminated;

429 4. An annual report need not be submitted if such a report previously was filed during for the  
 430 calendar year in which reinstatement is sought. The application for reinstatement may be by letter signed  
 431 by an officer or director of the corporation, or may be by affidavit signed by an agent of any  
 432 shareholder's interests stating that after diligent search by such agent no officer or director can be found.  
 433 The Commission shall assess the amounts that would have become due that corresponds to the calendar  
 434 year of the latest annual registration fee that was assessed or that would have been assessed to the date  
 435 of reinstatement;

436 5. If the name of the corporation does not comply with the provisions of § 13.1-630 at the time of  
 437 reinstatement, articles of amendment to the articles of incorporation to change the corporation's name to  
 438 a name that satisfies the provisions of § 13.1-630, with the fee required by this chapter for the filing of  
 439 articles of amendment; and

440 6. If the corporation's registered agent has filed a statement of resignation and a new registered  
 441 agent has not been appointed, a statement of change pursuant to § 13.1-635.

442 C. If the corporation complies with the provisions of this section, the Commission shall enter an  
 443 order of reinstatement of corporate existence. Upon the entry by the Commission of an the order of  
 444 reinstatement, the corporate existence shall be deemed to have continued from the date of termination of  
 445 corporate existence as if the termination had never occurred, and any liability incurred by the  
 446 corporation or a director, officer, or other agent after the termination of corporate existence and before  
 447 the reinstatement shall be is determined as if the termination of corporate the corporation's existence had  
 448 never occurred. If the name of a corporation that has ceased to exist is not distinguishable upon the  
 449 records of the Commission, the reinstated corporation shall not engage in business until it has amended  
 450 its articles of incorporation to change its name to a name that is distinguishable upon the records of the  
 451 Commission.

452 **§ 13.1-759. Application for certificate of authority.**

453 A. A foreign corporation may apply to the Commission for a certificate of authority to transact  
 454 business in the Commonwealth. The application shall be made on forms prescribed and furnished by the  
 455 Commission. The application shall set forth:

456 1. The name of the corporation, and if the corporation is prevented by § 13.1-762 from using its own  
 457 name in the Commonwealth, a designated name that satisfies the requirements of subsection B of  
 458 § 13.1-762;

459 2. The name of the state or other jurisdiction under whose law it is incorporated, and if the  
 460 corporation was previously authorized or registered to transact business in the Commonwealth as a  
 461 foreign corporation, limited liability company, business trust, limited partnership, or registered limited  
 462 liability partnership, with respect to every such prior authorization or registration, (i) the name of the  
 463 entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization, or formation;  
 464 and (iv) the entity identification number issued to it by the Commission;

465 3. The date of incorporation and period of duration;

466 4. The street address of the foreign corporation's principal office;

467 5. The address of the proposed registered office of the foreign corporation in the Commonwealth  
 468 (including both (i) the post office address with street and number, if any, and (ii) the name of the  
 469 county or city in which it is located) and the name of its proposed registered agent in the  
 470 Commonwealth at such address and that the registered agent is either (a) an individual who is a resident  
 471 of Virginia and either an officer or director of the corporation or a member of the Virginia State Bar or  
 472 (b) a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited  
 473 liability partnership authorized to transact business in the Commonwealth, the business office of which is  
 474 identical with the registered office;

475 6. The names and usual business addresses of the current directors and principal officers of the  
 476 foreign corporation; and

477 7. The number of shares the corporation is authorized to issue, itemized by classes and series, if any,  
 478 within a class.

479 B. The foreign corporation shall deliver with the completed application a copy of its articles of  
 480 incorporation and all amendments thereto duly authenticated by the Secretary of State or other official  
 481 having custody of corporate records in the state or other jurisdiction under whose law it is incorporated.

482 C. If the Commission finds that the application complies with the requirements of law and that all  
 483 required fees have been paid, it shall issue a certificate of authority to transact business in the  
 484 Commonwealth.

485 **§ 13.1-760. Amended certificate of authority.**

486 A. A foreign corporation authorized to transact business in this Commonwealth shall obtain an  
 487 amended certificate of authority from the Commission if:

488 1. If it changes its corporate name or the state or country other jurisdiction of its incorporation; or

489 2. To abandon or change the designated name adopted by the corporation for use in the



*Commonwealth pursuant to subsection B of § 13.1-762.*

B. The requirements of § 13.1-759 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

C. Whenever the articles of incorporation of a foreign corporation that is authorized to ~~do~~ *transact* business in ~~Virginia~~ *the Commonwealth* are amended, within ~~thirty~~ 30 days after the amendment becomes effective, the foreign corporation shall file with the Commission a copy of such amendment duly authenticated by the Secretary of State or other official having custody of corporate records in the state or ~~country~~ *other jurisdiction* under whose law it is incorporated.

**§ 13.1-762. Corporate name of foreign corporation.**

A. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such foreign corporation satisfies the requirements of § 13.1-630.

B. If the corporate name of a foreign corporation does not satisfy the requirements of § 13.1-630, to obtain or maintain a certificate of authority to transact business in the Commonwealth:

1. The foreign corporation may ~~add~~ *use a designated name that adds* the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," to its corporate name ~~for use in the Commonwealth or, if it is a professional corporation, the words~~ *"professional corporation" or "a professional corporation" or the initials "P.C." or "PC" at the end of* its corporate name, if it informs the Commission of the designated name; or

2. If its real name is unavailable, the foreign corporation may use a designated name that is available, and that satisfies the requirements of § 13.1-630, if it informs the Commission of the designated name.

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

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

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

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

**§ 13.1-767. Withdrawal of foreign corporation.**

A. A foreign corporation authorized to transact business in the Commonwealth may not withdraw from the Commonwealth until it obtains a certificate of withdrawal from the Commission.

B. A foreign corporation authorized to transact business in the Commonwealth may apply to the Commission for a certificate of withdrawal. The application shall be on a form prescribed and furnished by the Commission, which shall set forth:

1. The name of the foreign corporation and the name of the state or ~~country~~ *other jurisdiction* under whose law it is incorporated;

2. ~~That If applicable, a statement that the foreign corporation is in existence and has not been merged into or consolidated with another entity or converted into another type of entity or, if the foreign corporation has been merged into or consolidated with another entity or converted into another type of entity, that the application is signed on behalf of the foreign corporation by the surviving or resulting entity was a party to a merger permitted by the laws of the state or other jurisdiction under whose law it was incorporated and that it was not the surviving entity of the merger, has consolidated with another entity, or has converted to another type of entity under the laws of the state or other jurisdiction under whose law it was incorporated;~~

3. That the foreign corporation is not transacting business in the Commonwealth and that it surrenders its authority to transact business in the Commonwealth;

4. That the foreign corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in the Commonwealth;

5. A mailing address to which the clerk of the Commission may mail a copy of any process served on the clerk under subdivision 4; and

6. A commitment to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

C. The Commission shall not allow any foreign corporation to withdraw from the Commonwealth unless such corporation files with the Commission a statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate *or a statement that no such returns are required to be filed or taxes are required to be paid.* In such case the corporation may file returns and pay taxes before they would otherwise be due. If the Commission finds that the application complies with the requirements of law and that all required fees have been paid, it shall issue a certificate of withdrawal.

D. Before any foreign corporation authorized to transact business in the Commonwealth terminates its corporate existence, it shall file with the Commission an application for withdrawal. Whether or not such application is filed, the termination of the corporate existence of such foreign corporation shall not take away or impair any remedy available against such corporation for any right or claim existing or any liability incurred prior to such termination. Any such action or proceeding against such foreign corporation may be defended by such corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. The right of a foreign corporation that has terminated its corporate existence to institute and maintain in its corporate name actions, suits or proceedings in the courts of the Commonwealth shall be governed by the law of the state of its incorporation.

E. Service of process on the clerk of the Commission is service of process on a foreign corporation that has withdrawn pursuant to this section. Service upon the clerk shall be made in accordance with § 12.1-19.1 and service upon the foreign corporation may be made in any other manner permitted by law.

**§ 13.1-769. Involuntary revocation of certificate of authority.**

A. The certificate of authority to do business in the Commonwealth of any foreign corporation may be revoked by order of the Commission when it finds that the corporation:

1. Has continued to exceed the authority conferred upon it by law;

2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required by law;

3. Has failed to file any document required by this chapter to be filed with the Commission;

4. No longer exists under the laws of the state or country of its incorporation; or

5. Has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

A certificate revoked pursuant to subdivision A 5 shall not be eligible for ~~reentry~~ reinstatement for a period of not less than one year.

B. Any foreign corporation convicted of the offense listed in subdivision A 5 shall immediately report such conviction to the Commission and file with the Commission an authenticated copy of the judgment or record of conviction.

C. Before entering any such order the Commission shall issue a rule against the corporation giving it an opportunity to be heard and show cause why such an order should not be entered. The Commission may issue the rule on its own motion or on motion of the Attorney General.

D. The authority of a foreign corporation to transact business in the Commonwealth ceases on the date shown on the order revoking its certificate of authority.

E. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk of the Commission the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in the Commonwealth. Service of process on the clerk of the Commission under this subsection is service on the foreign corporation and shall be made on the clerk in accordance with § 12.1-19.1.

F. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

**§ 13.1-769.1. Reinstatement of a foreign corporation whose certificate of authority has been withdrawn or revoked.**

A. A foreign corporation whose certificate of authority issued by the Commission to transact business in the Commonwealth has been ~~surrendered~~ withdrawn or revoked may ~~apply to be relieved of the withdrawal or revocation and have its certificate of authority reinstated by the Commission for reentry~~ within five years ~~thereafter~~ after the date of withdrawal or revocation unless the certificate of authority was revoked by order of the Commission upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law pursuant to subdivision A 1 of § 13.1-769. The

B. To have its certificate of authority reinstated, a foreign corporation shall provide the Commission shall enter an order ~~reentering~~ the certificate of authority upon receiving an annual report, together with payment of a ~~reentry~~ with the following:

1. An application for reinstatement, which shall include the identification number issued by the Commission to the corporation, and which may be in the form of a letter signed by an officer or director of the corporation, or which may be by affidavit signed by an agent of any shareholder's interests stating that after diligent search by such agent, no officer or director can be found;

2. A reinstatement fee of \$100 ~~plus~~ all;

3. All annual registration fees and penalties that were due before the certificate of withdrawal was issued or the certificate of authority was ~~surrendered~~ or revoked and that would have ~~become~~ due ~~thereafter~~ been assessed or imposed to the date of reinstatement if the corporation had not withdrawn or had its certificate of authority ~~surrendered~~ or revoked. The application for ~~reentry~~ may be by letter signed by an officer or director of the corporation. A corporation need not refile a copy of its charter or any amendment thereof that is then on file in the office of the clerk of the Commission. After the authority of a foreign corporation to transact business in the Commonwealth has been ~~surrendered~~ or revoked, the clerk shall retain in the files of the clerk's office the charter and amendments thereto filed by the corporation and its original application for authority to transact business for a period of five years.;

4. An annual report for the calendar year that corresponds to the calendar year of the latest annual registration fee that was assessed or that would have been assessed to the date of reinstatement;

5. A duly authenticated copy of any amendments or corrections made to the articles of incorporation by a or other constituent documents of the foreign corporation and any mergers entered into by a the foreign corporation from the date of ~~surrender~~ withdrawal or revocation of its certificate of authority to the date of its application for ~~reentry~~ shall be filed with the application for ~~reentry~~. reinstatement, along with an application for an amended certificate of authority if required as a result of an amendment or a correction, and all fees required by this chapter for the filing of such instruments;

6. If the name of a the foreign corporation, whose certificate of authority issued by the Commission has been ~~surrendered~~ or revoked, is not distinguishable upon the records of the Commission does not comply with the provisions of § 13.1-762 at the time application is made for ~~reentry~~ of reinstatement, such foreign corporation shall an application for an amended certificate of authority to adopt a designated name for use in the Commonwealth that is distinguishable upon the records of the Commission. Upon compliance satisfies the requirements of § 13.1-762, with the fee required by this chapter for the filing of an application for an amended certificate of authority; and

7. If the foreign corporation's registered agent has filed a statement of resignation and a new

674 *registered agent has not been appointed, a statement of change pursuant to § 13.1-764.*

675 *C. If the foreign corporation complies with the provisions of this section, the Commission shall enter*  
676 *an order reentering of reinstatement, reinstating the foreign corporation's certificate of authority to do*  
677 *transact business in the Commonwealth.*

678 **§ 13.1-804. Filing requirements.**

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

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

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

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

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

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

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

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

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

700 G. Any annual report required to be filed by § 13.1-936 shall be signed in the name of the  
701 corporation by an officer or director listed in the report *or, if the corporation is in the hands of a*  
702 *receiver, trustee, or other court-appointed fiduciary, by that fiduciary.*

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

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

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

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

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

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

720 2. The facts may include:

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

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

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

728 3. As used in this subsection:

729 a. "Filed document" means a document filed with the Commission under § 13.1-819 or Article 10  
730 (§ 13.1-884 et seq.) or 11 (§ 13.1-894 et seq.) of this Act; and

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

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

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

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

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

#### **§ 13.1-810.1. Number of members.**

A. For purposes of this Act, the following identified as a member in a corporation's current record of members constitutes one member:

- 1. Two or more ~~co-owners~~ *persons who together have a single membership interest in the corporation;*
- 2. A corporation, limited liability company, partnership, limited partnership, business trust, trust, estate, or other entity; or
- 3. The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

B. For purposes of this Act, membership interests registered in substantially similar names constitute one member if it is reasonable to believe that the names represent the same person.

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

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

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

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

#### **§ 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 that is not accepted for filing, at any time within one year from the date of its payment. When the Commission receives payment of an annual registration fee assessed against a domestic or foreign corporation, such payment shall be applied against any unpaid annual registration fees previously assessed against such corporation, including any penalties incurred thereon, beginning with the assessment or penalty that has remained unpaid for the longest period of time.

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 *annual* 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 A domestic or foreign 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 instrument of merger on or before such date, shall not be required to pay the annual registration fee for that assessed against it pursuant to subsection B of § 13.1-936.1 in any year if (i) the Commission issues or files any of the following types of certificate or instrument and (ii) the certificate or instrument is effective on or before the annual registration fee due date:

1. A certificate of termination of corporate existence, a certificate of incorporation surrender, or a certificate of entity conversion for a domestic corporation;

2. A certificate of withdrawal for a foreign corporation;

3. A certificate of merger or an authenticated copy of an instrument of merger for a domestic or foreign corporation that has merged into a surviving domestic corporation or eligible entity, or into a surviving foreign corporation or eligible entity; or

4. An authenticated copy of an instrument of entity conversion for a foreign corporation that has converted to a different entity type.

The Commission shall cancel the annual registration fee assessments specified in this subsection that remain unpaid.

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

#### § 13.1-818. Incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by signing and filing delivering articles of incorporation with to the Commission for filing.

#### § 13.1-885. Amendment of articles of incorporation by directors.

A. Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of at least two-thirds of the directors in office. The board may adopt one or more amendments at any one meeting.

B. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without member action:

1. To delete the names and addresses of the initial directors;

2. To delete the name and address of the initial registered agent or the address of the initial registered office, if a statement of change described in § 13.1-834 is on file with the Commission;

3. To add, delete, or change a geographic attribution for the name; or

4. To make any other change expressly permitted by this Act to be made without member action.

#### § 13.1-898.5. Surrender of articles of incorporation upon domestication.

A. Whenever a domestic corporation has adopted and approved, in the manner required by this article, a plan of domestication providing for the corporation to be domesticated under the laws of another jurisdiction, the corporation shall file with the Commission articles of incorporation surrender setting forth:

1. The name of the corporation;

2. The corporation's new jurisdiction of incorporation in which the corporation is to be domesticated and the name of the corporation upon its domestication under the laws of that jurisdiction;

3. The plan of domestication;

4. A statement that the articles of incorporation surrender are being filed in connection with the domestication of the corporation as a foreign corporation to be incorporated under the laws of another jurisdiction and that the corporation is surrendering its charter under the laws of the Commonwealth;

5. Where the members of the corporation have voting rights, a statement:

a. That the plan was adopted by the unanimous consent of the members; or

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

(1) The existence of a quorum of 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;

6. Where the corporation has no members, or no members having voting rights, then a statement of that fact, 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;

7. A statement that the domestic corporation revokes the authority of its registered agent to accept service on its behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was incorporated in the Commonwealth;

8. A mailing address to which the clerk may mail a copy of any process served on ~~him~~ the clerk under subdivision 7; and

9. A commitment by the corporation to notify the clerk of the Commission in the future of any change in the mailing address of the corporation.

B. If the Commission finds that the articles of incorporation surrender comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of incorporation surrender.

C. The corporation shall automatically cease to be a domestic corporation when the certificate of incorporation surrender becomes effective.

D. If the former domestic corporation intends to continue to transact business in the Commonwealth, then, within 30 days after the effective date of the certificate of incorporation surrender, it shall deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth pursuant to § 13.1-921 together with a copy of its instrument of domestication and articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated or domesticated.

*E. Service of process on the clerk of the Commission is service of process on a former domestic corporation that has surrendered its charter pursuant to this section. Service on the clerk shall be made in accordance with § 12.1-19.1 and service on the former domestic corporation may be made in any other manner permitted by law.*

#### **§ 13.1-898.7. Abandonment of domestication.**

A. Unless otherwise provided in a plan of domestication of a domestic corporation ~~prohibits abandonment of the domestication without member approval to become a foreign corporation~~, after the domestication plan has been ~~authorized~~ approved and adopted as required by this article, and at any time before the certificate of domestication filed in the other jurisdiction incorporation surrender has become effective, the domestication may be abandoned by the domestic corporation without further member action by its members in accordance with the procedure any procedures set forth in the plan of domestication or, if ~~none~~ is no such procedures are set forth in the plan of domestication, in the manner determined by the board of directors.

B. If a domestication is abandoned as provided under subsection A after articles of incorporation surrender have been filed with the Commission but before the certificate of incorporation surrender has become effective, written notice that the domestication has been abandoned in accordance with this section shall be filed with the Commission prior to the effective date of the certificate of incorporation surrender. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

C. If the domestication of a foreign corporation into the Commonwealth is abandoned in accordance with the laws of the foreign jurisdiction in which the foreign corporation is incorporated after articles of domestication have been filed with the Commission but before the certificate of domestication has become effective in the Commonwealth, written notice that the domestication has been abandoned shall be filed with the Commission prior to the effective time and date of the certificate of domestication. The notice shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

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

A. A corporation that has ceased to exist pursuant to this article may apply to the Commission for reinstatement within five years thereafter unless the corporate existence was terminated by order of the Commission (i) upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law or (ii) entered pursuant to § 13.1-911 and the circuit court's decree directing dissolution contains no provision of reinstatement of corporate existence. ~~The Commission shall enter an order reinstating the~~

*B. To have its corporate existence upon receiving an annual report together with payment of a reinstated, the corporation shall provide the Commission with the following:*

*1. An application for reinstatement, which shall include the identification number issued by the*

920 *Commission to the corporation, and which may be in the form of a letter signed by an officer or*  
921 *director of the corporation, or which may be by affidavit signed by an agent of any member's interests*  
922 *stating that after diligent search by such agent, no officer or director can be found;*

923 2. A reinstatement fee of \$10 ~~plus all~~;

924 3. ~~All annual~~ registration fees and penalties that were due before the corporation ceased to exist and  
925 that would have ~~become due thereafter~~ *been assessed or imposed to the date of reinstatement* if the  
926 ~~corporation~~ *corporation's existence* had not ~~ceased to exist~~ *been terminated*;

927 4. An annual report ~~need not be submitted if such a report previously was filed during for the~~  
928 ~~calendar year in which reinstatement is sought. The application for reinstatement may be by letter signed~~  
929 ~~by an officer or director of the corporation or may be by affidavit signed by any member stating that~~  
930 ~~after diligent search by such member no officer or director could be found. The Commission shall assess~~  
931 ~~the amounts that would have become due. that corresponds to the calendar year of the latest annual~~  
932 ~~registration fee that was assessed or that would have been assessed to the date of reinstatement;~~

933 5. *If the name of the corporation does not comply with the provisions of § 13.1-829 at the time of*  
934 *reinstatement, articles of amendment to the articles of incorporation to change the corporation's name to*  
935 *a name that satisfies the provisions of § 13.1-829, with the fee required by this chapter for the filing of*  
936 *articles of amendment; and*

937 6. *If the corporation's registered agent has filed a statement of resignation and a new registered*  
938 *agent has not been appointed, a statement of change pursuant to § 13.1-834.*

939 C. *If the corporation complies with the provisions of this section, the Commission shall enter an*  
940 *order of reinstatement of corporate existence. Upon the entry by the Commission of an the order of*  
941 *reinstatement, the corporate existence shall be deemed to have continued from the date of termination of*  
942 *corporate existence as if termination had never occurred, and any liability incurred by the corporation or*  
943 *a director, officer, or other agent after the termination of corporate existence and before the*  
944 *reinstatement shall be is determined as if the termination of corporate the corporation's existence had*  
945 *never occurred. If the name of a corporation that has ceased to exist is not distinguishable upon the*  
946 *records of the Commission, the reinstated corporation shall not engage in business until it has amended*  
947 *its articles of incorporation to change its name to a name that is distinguishable upon the records of the*  
948 *Commission.*

949 **§ 13.1-921. Application for certificate of authority.**

950 A. A foreign corporation may apply to the Commission for a certificate of authority to transact  
951 business in the Commonwealth. The application shall be made on forms prescribed and furnished by the  
952 Commission. The application shall set forth:

953 1. The name of the corporation, and if the corporation is prevented by § 13.1-924 from using its ~~own~~  
954 name in the Commonwealth, a designated name that satisfies the requirements of subsection B of  
955 § 13.1-924;

956 2. The name of the state or other jurisdiction under whose laws it is incorporated, and if the  
957 corporation was previously authorized or registered to transact business in the Commonwealth as a  
958 foreign corporation, limited liability company, business trust, limited partnership, or registered limited  
959 liability partnership, with respect to every such prior authorization or registration, (i) the name of the  
960 entity; (ii) the entity type; (iii) the state or other jurisdiction of incorporation, organization, or formation;  
961 and (iv) the entity identification number issued to it by the Commission;

962 3. The date of incorporation and period of duration;

963 4. The street address of the foreign corporation's principal office;

964 5. The address of the proposed registered office of the foreign corporation in the Commonwealth,  
965 including both (i) the post office address with street and number, if any, and (ii) the name of the county  
966 or city in which it is located, and the name of its proposed registered agent in the Commonwealth at  
967 such address and that the registered agent is either (a) an individual who is a resident of Virginia and  
968 either an officer or director of the corporation or a member of the Virginia State Bar or (b) a domestic  
969 or foreign stock or nonstock corporation, limited liability company, or registered limited liability  
970 partnership authorized to transact business in the Commonwealth, the business office of which is  
971 identical with the registered office; and

972 6. The names and usual business addresses of the current directors and *principal* officers of the  
973 foreign corporation.

974 B. The foreign corporation shall deliver with the completed application a copy of its articles of  
975 incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official  
976 having custody of corporate records in the state or other jurisdiction under whose laws it is incorporated.

977 C. If the Commission finds that the application complies with the requirements of law, and that all  
978 required fees have been paid, it shall issue a certificate of authority to transact business in the  
979 Commonwealth.

980 **§ 13.1-922. Amended certificate of authority.**

981 A. A foreign corporation authorized to transact business in the Commonwealth shall obtain an



amended certificate of authority from the Commission if:

1. If it changes its corporate name or the state or ~~country~~ other jurisdiction of its incorporation; or  
 2. To abandon or change the designated name adopted by the corporation for use in the Commonwealth pursuant to subsection B of § 13.1-924.

B. The requirements of § 13.1-921 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

C. Whenever the articles of incorporation of a foreign corporation that is authorized to transact business in ~~Virginia~~ the Commonwealth are amended, within 30 days after the amendment becomes effective, the foreign corporation shall file with the Commission a copy of such amendment duly authenticated by the Secretary of State or other official having custody of corporate records in the state or ~~country~~ other jurisdiction under whose law it is incorporated.

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

A. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under whose laws it is incorporated, and such corporation is the surviving entity of the merger, it shall, within 30 days after such merger becomes effective, file with the Commission a copy of the instrument of merger duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose laws such merger was effected law it is incorporated; however, the filing shall not be required when a foreign corporation merges with a domestic corporation, the foreign corporation's articles of incorporation are not amended by said merger, and the articles of merger filed on behalf of the domestic corporation pursuant to § 13.1-896 contain a statement that the merger is permitted under the laws of the state or other jurisdiction in which the foreign corporation is incorporated and that the foreign corporation has complied with that law in effecting the merger.

B. Whenever a foreign corporation authorized to transact business in the Commonwealth is a party to a merger permitted by the laws of the state or other jurisdiction under the laws of which it is incorporated, and such corporation is not the surviving entity of the merger or, whenever such a foreign corporation is a party to a consolidation so permitted, the surviving or resulting domestic or foreign corporation, limited liability company, business trust, partnership, or limited partnership shall, if not continuing to transact business in the Commonwealth, within 30 days after such merger or consolidation becomes effective, deliver to the Commission a copy of the instrument of merger or consolidation duly authenticated by the Secretary of State or other official having custody of corporate records in the state or other jurisdiction under whose laws such merger or consolidation was effected law it was incorporated and comply in behalf of the predecessor corporation with the provisions of § 13.1-929. If a surviving or resulting corporation or limited liability company, business trust, partnership, or limited partnership is to continue to transact business in the Commonwealth and has not received a certificate of authority to transact business in the Commonwealth, within such 30 days, deliver to the Commission an application for a certificate of authority to transact business in the Commonwealth, together with a duly authenticated copy of the instrument of merger or consolidation and also, in case of a merger, a copy of its articles of incorporation and all amendments thereto, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose laws it is incorporated.

C. Upon the merger or consolidation of two or more foreign corporations any one of which owns property in the Commonwealth, all such property shall pass to the surviving or resulting corporation except as otherwise provided by the laws of the state by which it is governed, but only from the time when a duly authenticated copy of the instrument of merger or consolidation is filed with the Commission.

**§ 13.1-929. Withdrawal of foreign corporation.**

A. A foreign corporation authorized to transact business in the Commonwealth may not withdraw from the Commonwealth until it obtains a certificate of withdrawal from the Commission.

B. A foreign corporation authorized to transact business in the Commonwealth may apply to the Commission for a certificate of withdrawal. The application shall be on a form prescribed and furnished by the Commission and shall set forth:

1. The name of the foreign corporation and the name of the state or ~~country~~ other jurisdiction under whose laws it is incorporated;

2. ~~That~~ If applicable, a statement that the foreign corporation is in existence and has not been merged into or consolidated with another entity or converted into another type of entity or, if the foreign corporation has been merged into or consolidated with another entity or converted into another type of entity, that the application is signed on behalf of the foreign corporation by the surviving or resulting entity was a party to a merger permitted by the laws of the state or other jurisdiction under whose law it was incorporated and that it was not the surviving entity of the merger, has consolidated with another entity, or has converted to another type of entity under the laws of the state or other jurisdiction under

1043 *whose law it was incorporated;*

1044 3. That the foreign corporation is not transacting business in the Commonwealth and that it  
1045 surrenders its authority to transact business in the Commonwealth;

1046 4. That the foreign corporation revokes the authority of its registered agent to accept service on its  
1047 behalf and appoints the clerk of the Commission as its agent for service of process in any proceeding  
1048 based on a cause of action arising during the time it was authorized to transact business in the  
1049 Commonwealth;

1050 5. A mailing address to which the clerk of the Commission may mail a copy of any process served  
1051 on him under subdivision 4; and

1052 6. A commitment to notify the clerk of the Commission in the future of any change in the mailing  
1053 address of the corporation.

1054 C. The Commission shall not allow any foreign corporation to withdraw from the Commonwealth  
1055 unless such corporation files with the Commission a statement certifying that the corporation has filed  
1056 returns and has paid all state taxes to the time of the certificate or a statement that no such returns are  
1057 required to be filed or taxes are required to be paid. In such case the corporation may file returns and  
1058 pay taxes before they would otherwise be due. If the Commission finds that the application complies  
1059 with the requirements of law and that all required fees have been paid, it shall issue a certificate of  
1060 withdrawal.

1061 D. Before any foreign corporation authorized to transact business in the Commonwealth terminates  
1062 its corporate existence, it shall file with the Commission an application for withdrawal. Whether or not  
1063 such application is filed, the termination of the corporate existence of such foreign corporation shall not  
1064 take away or impair any remedy available against such corporation for any right or claim existing or any  
1065 liability incurred prior to such termination. Any such action or proceeding against such foreign  
1066 corporation may be defended by such corporation in its corporate name. The members, directors and  
1067 officers shall have power to take such corporate or other action as shall be appropriate to protect such  
1068 remedy, right or claim. The right of a foreign corporation that has terminated its corporate existence to  
1069 institute and maintain in its corporate name actions, suits or proceedings in the courts of the  
1070 Commonwealth shall be governed by the law of the state of its incorporation.

1071 E. Service of process on the clerk of the Commission is service of process on a foreign corporation  
1072 that has withdrawn pursuant to this section. Service upon the clerk shall be made in accordance with  
1073 § 12.1-19.1, and service upon the foreign corporation may be made in any other manner permitted by  
1074 law.

1075 **§ 13.1-931. Involuntary revocation of certificate of authority.**

1076 A. The certificate of authority to transact business in the Commonwealth of any foreign corporation  
1077 may be revoked by order of the Commission when it finds that the corporation:

1078 1. Has continued to exceed the authority conferred upon it by law;

1079 2. Has failed to maintain a registered office or a registered agent in the Commonwealth as required  
1080 by law;

1081 3. Has failed to file any document required by this Act to be filed with the Commission;

1082 4. No longer exists under the laws of the state or country of its incorporation; or

1083 5. Has been convicted for a violation of 8 U.S.C. § 1324a(f), as amended, for actions of its officers  
1084 and directors constituting a pattern or practice of employing unauthorized aliens in the Commonwealth.

1085 A certificate revoked pursuant to subdivision A 5 shall not be eligible for ~~reentry~~ *reinstatement* for a  
1086 period of not less than one year.

1087 B. Any foreign corporation convicted of the offense listed in subdivision A 5 shall immediately  
1088 report such conviction to the Commission and file with the Commission an authenticated copy of the  
1089 judgment or record of conviction.

1090 C. Before entering any such order the Commission shall issue a rule against the corporation giving it  
1091 an opportunity to be heard and show cause why such an order should not be entered. The Commission  
1092 may issue the rule on its own motion or on motion of the Attorney General.

1093 D. The authority of a foreign corporation to transact business in the Commonwealth ceases on the  
1094 date shown on the order revoking its certificate of authority.

1095 E. The Commission's revocation of a foreign corporation's certificate of authority appoints the clerk  
1096 of the Commission the foreign corporation's agent for service of process in any proceeding based on a  
1097 cause of action arising during the time the foreign corporation was authorized to transact business in the  
1098 Commonwealth. Service of process on the clerk of the Commission under this subsection is service on  
1099 the foreign corporation and shall be made on the clerk in accordance with § 12.1-19.1.

1100 F. Revocation of a foreign corporation's certificate of authority does not terminate the authority of  
1101 the registered agent of the corporation.

1102 **§ 13.1-931.1. Reinstatement of foreign corporation whose certificate of authority has been**  
1103 **withdrawn or revoked.**

1104 A. A foreign corporation whose certificate of authority issued by the Commission to transact

business in the Commonwealth has been ~~surrendered~~ withdrawn or revoked may apply to be relieved of the withdrawal or revocation and have its certificate of authority reinstated by the Commission for reentry within five years ~~thereafter~~ after the date of withdrawal or revocation unless the certificate of authority was revoked by order of the Commission upon a finding that the corporation has continued to exceed or abuse the authority conferred upon it by law pursuant to subdivision A 1 of § 13.1-931.

The B. To have its certificate of authority reinstated, a foreign corporation shall provide the Commission shall enter an order reentering the certificate of authority upon receiving an annual report, together with payment of a reentry with the following:

1. An application for reinstatement, which shall include the identification number issued by the Commission to the corporation, and which may be in the form of a letter signed by an officer or director of the corporation, or which may be by affidavit signed by an agent of any member's interests stating that after diligent search by such agent, no officer or director can be found;

2. A reinstatement fee of \$10 ~~plus~~ all;

3. All annual registration fees and penalties that were due before the certificate of withdrawal was issued or the certificate of authority was ~~surrendered~~ or revoked and that would have become due ~~thereafter~~ been assessed or imposed to the date of reinstatement if the corporation had not withdrawn or had its certificate of authority ~~surrendered~~ or revoked. The application for reentry may be by letter signed by an officer or director of the corporation. A corporation need not refile a copy of its charter or any amendment thereof that is then on file in the office of the clerk of the Commission. After the authority of a foreign corporation to transact business in the Commonwealth has been ~~surrendered~~ or revoked, the clerk shall retain in the files of his office the charter and amendments thereto filed by the corporation and its original application for authority to transact business for a period of five years.;

4. An annual report for the calendar year that corresponds to the calendar year of the latest annual registration fee that was assessed or that would have been assessed to the date of reinstatement;

5. A duly authenticated copy of any amendments or corrections made to the articles of incorporation by a or other constituent documents of the foreign corporation and any mergers entered into by a the foreign corporation from the date of ~~surrender~~ withdrawal or revocation of its certificate of authority to the date of its application for reentry shall be filed with the application for reentry. reinstatement, along with an application for an amended certificate of authority if required as a result of an amendment or a correction, and all fees required by this chapter for the filing of such instruments;

6. If the name of a the foreign corporation, whose certificate of authority issued by the Commission has been ~~surrendered~~ or revoked, is not distinguishable upon the records of the Commission does not comply with the provisions of § 13.1-924 at the time application is made for reentry, such foreign corporation shall of reinstatement, an application for an amended certificate of authority to adopt a designated name for use in the Commonwealth that is distinguishable upon the records of the Commission satisfies the requirements of § 13.1-924, with the fee required by this chapter for the filing of an application for an amended certificate of authority; and

7. If the foreign corporation's registered agent has filed a statement of resignation and a new registered agent has not been appointed, a statement of change pursuant to § 13.1-926.

Upon compliance C. If the foreign corporation complies with the provisions of this section, the Commission shall enter an order reentering of reinstatement, reinstating the foreign corporation's certificate of authority to ~~do~~ transact business in the Commonwealth.

#### **§ 13.1-941.01. Conversion to a domestic stock corporation.**

A domestic ~~nonstock~~ corporation may convert to a domestic stock corporation by filing with the Commission articles of amendment to its articles of incorporation, approved organized under Chapter 9 (§ 13.1-601 et seq.) in accordance with § 13.1-885 or § 13.1-886 the provisions of this article.

#### **§ 13.1-942. Articles of restatement.**

A. A corporation converting to a domestic stock corporation shall file with the Commission articles of amendment restatement in accordance with § 13.1-888 13.1-889.

B. The In addition to the information required by subsection D of § 13.1-889, if the corporation has one or more classes of members, the articles of amendment restatement shall set forth:

1. The name of the corporation, which satisfies the requirements of § 13.1-630;

2. The number of shares the corporation will be authorized to issue;

3. If more than one class of shares is to be authorized, the number of authorized shares of each class and a distinguishing designation for each class;

4. A provision or provisions, if any, defining or denying the preemptive right of shareholders to acquire unissued shares of the corporation;

5. A provision substituting the word "shareholders" or other appropriate language for "members" wherever "members" appears in the articles of incorporation;

6. Provisions not inconsistent with law which may be necessary to bring the corporation into compliance with (i) the manner and basis of converting the membership interests of each class of

members of the corporation into shares or other securities, obligations, rights to acquire shares, or other securities, cash, other property, or any combination of the foregoing or (ii) a statement that the membership interests of the members will be canceled without consideration as a result of the corporation's conversion to a domestic stock corporation.

C. The articles of restatement shall set forth the text of the amended and restated articles of incorporation that comply with the requirements of Chapter 9 (§ 13.1-601 et seq.) of this title or which may be required for the regulation and governance of the corporation as a stock corporation; and

7. Such provisions, if any, which are permitted by ~~§ 13.1-619~~ to be included in articles of incorporation of a Virginia stock corporation as they will be in effect immediately upon the consummation of the conversion.

~~C.~~ D. If the Commission finds that the articles of ~~amendment~~ restatement comply with the requirements of law and bring the articles of incorporation into compliance with the requirements for a Virginia stock corporation, and that all required fees have been paid, it shall issue a certificate of ~~amendment~~ restatement in accordance with § 13.1-889.

#### **§ 13.1-943. Fees.**

Upon the filing of the articles of ~~amendment~~ restatement to convert to a domestic stock corporation, in addition to the fees required by § 13.1-816 for filing articles of ~~amendment~~ restatement, a corporation shall also pay a fee equal to that required for a newly chartered stock corporation authorized to issue the same number of shares, as set forth in subsection A of § 13.1-615.1.

#### **§ 13.1-944. Effect of conversion.**

A. ~~Upon the effective date of the certificate of amendment, the~~ When a conversion under this article becomes effective:

1. The corporation ~~shall be converted to~~ continues its existence as a domestic stock corporation, and thereafter be subject to the provisions of Chapter 9 (§ 13.1-601 et seq.) of this title;

~~B.~~ 2. The directors of the corporation at the time of conversion shall continue in office until their terms expire and new directors are elected by the shareholders;

3. The title to all real estate and other property remains in the domestic stock corporation without reversion or impairment;

4. The liabilities remain the liabilities of the domestic stock corporation;

5. A pending proceeding may be continued by or against the domestic stock corporation as if the conversion did not occur;

6. The amended and restated articles of incorporation set forth in the articles of restatement shall constitute the articles of incorporation of the domestic stock corporation;

7. The membership interests, if any, of the corporation are reclassified into shares or other property, or canceled, in accordance with the articles of restatement, and the members of the corporation are entitled only to the rights provided in the articles of restatement;

8. The domestic stock corporation is deemed to:

a. Be a domestic stock corporation for all purposes;

b. Be the same corporation without interruption as the converting corporation that existed prior to the conversion; and

c. Have been incorporated on the date that the converting corporation was originally incorporated; and

9. The corporation shall cease to be a corporation organized under the provisions of this chapter.

B. Any member of a corporation that converts to a domestic stock corporation who, prior to the conversion, was liable for the liabilities or obligations of the corporation is not released from those liabilities or obligations by reason of the conversion.

#### **§ 13.1-944.5. Articles of entity conversion.**

A. After the conversion of a corporation into a limited liability company has been adopted and approved as required by this article, the converting entity shall file with the Commission articles of entity conversion setting forth:

1. The name of the corporation immediately prior to the filing of the articles of entity conversion and the name to which the name of the converting entity is to be changed, which name shall satisfy the requirements of the laws of the Commonwealth;

2. The plan of entity conversion, including the full text of the articles of organization of the resulting entity that comply with the requirements of Chapter 12 (§ 13.1-1000 et seq.), as they will be in effect immediately after consummation of the conversion;

3. A statement:

a. That the plan was adopted by the vote of at least two-thirds of the directors *in office*, including the reason member approval was not required;

b. That the plan was adopted by the unanimous consent of the members having voting rights; or

c. That the plan was proposed by the board of directors and submitted to the members in accordance with this chapter, and a statement of:

(1) The existence of a quorum of 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.

B. If the Commission finds that the articles of entity conversion comply with the requirements of law and that all required fees have been paid, it shall issue a certificate of entity conversion.

**§ 13.1-944.6. Effect of entity conversion.**

A. When an entity conversion under this article becomes effective, with respect to that entity:

1. The title to all real estate and other property remains in the resulting entity without reversion or impairment;

2. The liabilities remain the liabilities of the resulting entity;

3. A ~~proceeding~~ pending *proceeding* may be continued by or against the resulting entity as if the conversion did not occur;

4. The articles of organization attached to the articles of entity conversion constitute the articles of organization of the resulting entity;

5. The membership interests, if any, of the corporation are reclassified into LLC membership interests in accordance with the plan of entity conversion; and the members of the corporation are entitled only to the rights provided in the plan of entity conversion;

6. The resulting entity is deemed to:

a. Be a limited liability company for all purposes;

b. Be the same entity without interruption as the converting entity that existed prior to the conversion; and

c. Have been organized on the date that the converting entity was originally incorporated; and

7. The corporation shall cease to be a corporation when the certificate of entity conversion becomes effective.

*B. Any member of a corporation that converts to a limited liability company who, prior to the conversion, was liable for the liabilities or obligations of the limited liability company is not released from those liabilities or obligations by reason of the entity conversion.*

**§ 13.1-944.7. Abandonment of entity conversion.**

A. Unless *otherwise provided in a plan of entity conversion of a domestic corporation* ~~prohibits abandonment of the conversion without member approval to become a limited liability company~~, after the ~~conversion plan~~ *has been authorized approved and adopted as required by this article*, and at any time before the certificate of entity conversion has become effective, the conversion may be abandoned ~~by the corporation without further member action by the members in accordance with the procedure any procedures set forth in the plan of entity conversion or, if none is no such procedures are set forth in the plan of entity conversion~~, in the manner determined by the board of directors.

B. If an entity conversion is abandoned under subsection A after articles of entity conversion have been filed with the Commission but before the certificate of entity conversion has become effective, written notice that the entity conversion has been abandoned in accordance with this section shall be filed with the Commission prior to the effective *time and* date of the certificate of entity conversion. The notice shall take effect upon filing and the entity conversion shall be deemed abandoned and shall not become effective.