

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 291

An Act to amend and reenact §§ 13.1-750 and 13.1-767 of the Code of Virginia, relating to termination of corporate existence; withdrawal of foreign corporations.

[H 1122]

Approved April 4, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-750 and 13.1-767 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-750. Articles of termination of corporate existence.

A. When a corporation has distributed all of its assets to its creditors and shareholders and voluntary dissolution proceedings have not been revoked, it shall file articles of termination of corporate existence with the Commission. The articles shall set forth:

1. The name of the corporation;
2. That all the assets of the corporation have been distributed to its creditors and shareholders; and
3. That the dissolution of the corporation has not been revoked.

B. With the articles of termination of corporate existence, the corporation shall file a ~~certificate signed by the State Tax Commissioner that the corporation has filed a return and has paid all state taxes on account of its income to the time of the certificate~~ *statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate.* ~~On applying for the certificate of the State Tax Commissioner,~~ *In contemplation of submitting the required statement,* the corporation may file returns and pay taxes before such returns and taxes would otherwise be due.

C. If the Commission finds that the articles of termination of corporate existence comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of termination of corporate existence. Upon the issuance of such certificate the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this chapter.

D. The statement "that all the assets of the corporation have been distributed to its creditors and shareholders" means that the corporation has divested itself of all its assets by the payment of claims or liquidating dividends or by assignment to a trustee or trustees for the benefit of claimants or shareholders. If any person described in § 55-210.6 who is entitled to a share in the distribution of the assets cannot be found, the corporation may thereupon, and without awaiting the one year mentioned in § 55-210.7, pay his share to the State Treasurer as abandoned property on complying with all applicable requirements of § 55-210.12 except subdivision 4 of subsection B of that section.

§ 13.1-767. Withdrawal of foreign corporation.

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

B. A foreign corporation authorized to transact business in this Commonwealth may apply to the Commission for a certificate of withdrawal. The application shall be on forms 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 under whose law it is incorporated;
2. That the foreign corporation is not transacting business in this Commonwealth and that it surrenders its authority to transact business in this Commonwealth;
3. 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 this Commonwealth;

4. A mailing address to which the clerk may mail a copy of any process served on him under subdivision 3 of this subsection; and

5. 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 shall ~~file files~~ with the Commission a ~~certificate of the State Tax Commissioner that it has filed a return and paid or made provision for the payment of all state taxes or other charges on account of its income from sources within this Commonwealth during the part of the taxable year and any previous period when the corporation may have had income from sources within this Commonwealth~~ *statement certifying that the corporation has filed returns and has paid all state taxes to the time of the certificate.* 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 this 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 this 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 and shall be made upon the clerk in accordance with § 12.1-19.1.