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HOUSE BILL NO. 1009

Offered January 22, 1996

A BILL to amend and reenact § 13.1-708 of the Code of Virginia, relating to corporations; voting on amendments by classes of shares.

Patron—Murphy

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That § 13.1-708 of the Code of Virginia is amended and reenacted as follows:

§ 13.1-708. Voting on amendments by voting groups.

A. The outstanding shares of a class are entitled to vote as a separate voting group, *on a proposed amendment of the articles of incorporation* if shareholder voting is otherwise required by this chapter, ~~on a proposed amendment of the articles of incorporation~~ and if the amendment would:

1. Increase or decrease the aggregate number of authorized shares of the class, *provided that the vote of the class as a separate voting group is not required to increase or decrease the number of authorized shares of the class (but not below the number of shares thereof then outstanding and the number of shares required to be reserved for issuance), if so provided in the articles of incorporation as in effect prior to the issuance of any shares of the class or in any amendment thereto which was approved by the required vote of the shares of such class;*

2. Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

3. Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

4. Change the designation, rights, preferences, or limitations of all or part of the shares of the class, but such class shall not be entitled to vote as a separate voting group on an amendment increasing the number of authorized shares of a subordinate class solely because both such classes vote on some or all matters as a single voting group;

5. Change the shares of all or part of the class into a different number of shares of the same class;

6. Create a new class of shares, or change a class with subordinate and inferior rights into a class of shares, having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class, or increase the rights, preferences, or number of authorized shares of any class having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

7. In the case of a class of shares with preferential rights, divide the shares into a series, designate the series, and determine, or, unless authority was conferred at the time the class was created, authorize the board of directors to determine, variations in the rights, preferences and limitations among the shares of the respective series;

8. Limit or deny an existing preemptive right of all or part of the shares of the class; or

9. Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

B. If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection A of this section, the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

C. If a proposed amendment that entitles two or more *classes or series* of shares to vote as separate voting groups under this section would affect those two or more *classes or series* in the same or a substantially similar way, the shares of all the *classes or series* so affected shall vote together as a single voting group on the proposed amendment.

D. A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

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