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HOUSE BILL NO. 942

Offered January 9, 2002

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A BILL to amend and reenact §§ 13.1-603, 13.1-610, 13.1-658, 13.1-664.1, 13.1-686, 13.1-803, 13.1-842, 13.1-846, 13.1-847, and 13.1-866 of the Code of Virginia, relating to corporations; notice and voting by electronic transmission.

Patron—Morgan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-603, 13.1-610, 13.1-658, 13.1-664.1, 13.1-686, 13.1-803, 13.1-842, 13.1-846, 13.1-847, and 13.1-866 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-603. Definitions.

In this chapter:

"Articles of incorporation" means all documents constituting, at any particular time, the charter of a corporation. It includes the original charter issued by the General Assembly, a court or the Commission and all amendments including certificates of merger, except a certificate of merger with a subsidiary pursuant to § 13.1-719, consolidation, serial designation, reduction or correction. It excludes articles of exchange filed by an acquiring corporation. When the articles of incorporation have been restated pursuant to any articles of amendment or merger, it includes only the restated articles of incorporation, including any articles of serial designation, without the accompanying articles of amendment or merger.

"Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

"Certificate," when relating to articles filed with the Commission, means the order of the Commission that makes the articles effective, together with the articles.

"Commission" means the State Corporation Commission of Virginia.

"Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

"Corporation" or "domestic corporation" means a corporation authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this Act or existing pursuant to the laws of this Commonwealth on January 1, 1986, or which, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of this Commonwealth, even though also being a corporation organized under laws other than the laws of this Commonwealth, or which has become a domestic corporation of this Commonwealth pursuant to Article 12.1 (§ 13.1-722.2 et seq.) or Article 12.2 (§ 13.1-722.8 et seq.) of this chapter.

"Deliver" includes mail.

"Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in Article 8.1 (§ 13.1-672.1 et seq.) of Chapter 9 of this title, a foreign corporation.

"Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness of the corporation; or otherwise. Distribution does not include acquisition by a corporation of its shares from the estate or personal representative of a deceased shareholder, or any other shareholder, but only to the extent the acquisition is effected using the proceeds of insurance on the life of such deceased shareholder and the board of directors approved the policy and the terms of the redemption prior to the shareholder's death.

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

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

"Domestic partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under § 50-73.88, or predecessor law of this Commonwealth, and includes, for all purposes of the laws of this Commonwealth, a registered limited liability partnership.

"Effective date of notice" is defined in § 13.1-610.

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

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59 "Employee" includes an officer but not a director. A director may accept duties that make him also
60 an employee.

61 "Entity" includes corporation and foreign corporation; nonstock corporation; profit and not-for-profit
62 unincorporated association; business trust, estate, partnership, trust, and two or more persons having a
63 joint or common economic interest; and state, United States and foreign government.

64 "Foreign corporation" means a corporation authorized by law to issue shares, organized under laws
65 other than the laws of this Commonwealth.

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

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

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

72 "Foreign registered limited liability partnership" has the same meanings as specified in §§ 50-2 and
73 50-73.79.

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

75 "Includes" denotes a partial definition.

76 "Individual" includes the estate of an incapacitated or deceased individual.

77 "Means" denotes an exhaustive definition.

78 "Notice" is defined in § 13.1-610.

79 "Person" includes individual and entity.

80 "Principal office" means the office, in or out of this Commonwealth, where the principal executive
81 offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or
82 out of this Commonwealth, so designated by the board of directors. The designation of the principal
83 office in the most recent annual report filed pursuant to § 13.1-775 shall be conclusive for purposes of
84 this chapter.

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

87 "Record date" means the date established under Article 7 (§ 13.1-638 et seq.) or Article 8 (§ 13.1-654
88 et seq.) of this chapter on which a corporation determines the identity of its shareholders for purposes of
89 this chapter.

90 "Share" means the unit into which the proprietary interests in a corporation are divided.

91 "Shareholder" means the person in whose name shares are registered in the records of the
92 corporation, the beneficial owner of shares to the extent of the rights granted by a nominee certificate on
93 file with a corporation, or the beneficial owner of shares held in a voting trust.

94 "State" when referring to a part of the United States, includes a state and commonwealth, and their
95 agencies and governmental subdivisions; and a territory and insular possession, and their agencies and
96 governmental subdivisions, of the United States.

97 "Subscriber" means a person who subscribes for shares in a corporation, whether before or after
98 incorporation.

99 "United States" includes district, authority, bureau, commission, department, and any other agency of
100 the United States.

101 "Voting group" means all shares of one or more classes or series that under the articles of
102 incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a
103 meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote
104 generally on the matter are for that purpose a single voting group.

105 § 13.1-610. Notice.

106 For purposes of this chapter:

107 A. Notice shall be in writing except that oral notice of any meeting of the board of directors may be
108 given if expressly authorized by the articles of incorporation or bylaws.

109 B. Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire
110 or wireless communication; or by mail or private carrier. If these forms of personal notice are
111 impracticable, notice may be communicated by a newspaper of general circulation in the area where the
112 notice is intended to be given; or by radio, television or other form of public broadcast communication
113 in the area where the notice is intended to be given.

114 C. Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible
115 form, is effective when mailed, if mailed postpaid and correctly addressed to the shareholder's address
116 shown in the corporation's current record of shareholders.

117 D. Written notice to a domestic or foreign corporation, authorized to transact business in this
118 Commonwealth, may be addressed to its registered agent at its registered office or to the corporation or
119 its secretary at its principal office shown in its most recent annual report or, in the case of a foreign
120 corporation that has not yet filed an annual report, in its application for a certificate of authority.

121 E. Except as provided in subdivisions B and C of this section, written notice, if in a comprehensible
122 form, is effective at the earliest of the following:

123 1. When received;

124 2. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed
125 postpaid and correctly addressed;

126 3. On the date shown on the return receipt, if sent by registered or certified mail, return receipt
127 requested, and the receipt is signed by or on behalf of the addressee.

128 F. Oral notice is effective when communicated if communicated in a comprehensible manner.

129 G. When this chapter prescribes notice requirements for particular circumstances, those requirements
130 govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this
131 section or other provisions of this chapter, those requirements govern.

132 H. *Without limiting the manner by which notice otherwise may be given effectively to shareholders,*
133 *any notice to shareholders given by the corporation, under any provision of this chapter, the articles of*
134 *incorporation or the bylaws, shall be effective if given by a form of electronic transmission consented to*
135 *by the shareholder to whom the notice is given. Any such consent shall be revocable by the shareholder*
136 *by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is*
137 *unable to deliver by electronic transmission two consecutive notices given by the corporation in*
138 *accordance with such consent and (ii) such inability becomes known to the secretary or an assistant*
139 *secretary of the corporation or to the transfer agent, or other person responsible for the giving of*
140 *notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not*
141 *invalidate any meeting or other action. Notice given pursuant to this subsection shall be deemed given:*
142 *(i) if by facsimile telecommunication, when directed to a number at which the shareholder has consented*
143 *to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the*
144 *shareholder has consented to receive notice; (iii) if by a posting on an electronic network together with*
145 *separate notice to the stockholder of such specific posting when such notice is directed to an address at*
146 *which the shareholder has consented to receive notice, upon the later of such posting or the giving of*
147 *such separate notice; and (iv) if by any other form of electronic transmission, when consented to by the*
148 *shareholder. An affidavit of the secretary or an assistant secretary or of the transfer agent or other*
149 *agent of the corporation that the notice has been given by a form of electronic transmission shall, in the*
150 *absence of fraud, be prima facie evidence of the facts stated therein. This subsection shall not apply to*
151 *subsection D of § 13.1-642.*

152 § 13.1-658. Notice of meeting.

153 A. A corporation shall notify shareholders of the date, time, and place of each annual and special
154 shareholders' meeting. Such notice shall be given no less than ten nor more than sixty days before the
155 meeting date except that notice of a shareholders' meeting to act on an amendment of the articles of
156 incorporation, a plan of merger, share exchange, domestication or entity conversion, a proposed sale of
157 assets pursuant to § 13.1-724, or the dissolution of the corporation shall be given not less than
158 twenty-five nor more than sixty days before the meeting date. Unless this chapter or the articles of
159 incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to
160 vote at the meeting.

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

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

164 D. If not otherwise fixed under § 13.1-656 or § 13.1-660, the record date for determining
165 shareholders entitled to notice of and to vote at an annual or special meeting is the close of business on
166 the day before the effective date of the notice to shareholders.

167 E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different
168 date, time, or place notice need not be given if the new date, time, or place is announced at the meeting
169 before adjournment. If a new record date for the adjourned meeting is or shall be fixed under
170 § 13.1-660, however, notice of the adjourned meeting shall be given under this section to persons who
171 are shareholders as of the new record date.

172 F. Notwithstanding the foregoing, no notice of a shareholder's meeting need be given to a
173 shareholder if (i) an annual report and proxy statements for two consecutive annual meetings of
174 shareholders or (ii) all, and at least two, checks in payment of dividends or interest on securities during
175 a twelve-month period, have been sent by first-class United States mail, addressed to the shareholder at
176 his address as it appears on the share transfer books of the corporation, and returned undeliverable. The
177 obligation of the corporation to give notice of shareholders' meetings to any such shareholder shall be
178 reinstated once the corporation has received a new address for such shareholder for entry on its share
179 transfer books.

180 G. ~~A corporation having 300 or more record shareholders may notify shareholders of annual and~~
181 ~~special shareholders' meetings under this section by electronic transmission upon receipt by the secretary~~

182 of the corporation of (i) a writing signed by the shareholder or (ii) a transmission of a telegram,
183 cablegram or other means of electronic transmission from the shareholder, provided that any such
184 telegram, cablegram or other means of electronic transmission must either set forth or be submitted with
185 information from which the secretary can determine the telegram, cablegram or other means of
186 electronic transmission was authorized by the shareholder, authorizing delivery of such notices by
187 electronic transmission.

188 § 13.1-664.1. Voting procedures and inspectors of elections.

189 A. The corporation shall, in advance of any meeting of shareholders, appoint one or more inspectors
190 to act at the meeting and make a written report thereof. The corporation may designate one or more
191 persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is
192 able to act at a meeting of shareholders, the person presiding at the meeting shall appoint one or more
193 inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall
194 take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according
195 to the best of his ability.

196 B. The inspector shall (i) ascertain the number of shares outstanding and the voting powers of each,
197 (ii) determine the shares represented at a meeting and the validity of proxies and ballots, (iii) count all
198 votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any
199 challenges made to any determination by the inspectors, and (v) certify their determination of the
200 number of shares represented at the meeting and their count of all votes and ballots. The inspectors may
201 appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the
202 inspectors.

203 C. The date and time of the opening and the closing of the polls for each matter upon which the
204 shareholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor
205 any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the
206 polls unless the circuit court of the city or county where the corporation's principal office is located or,
207 if none in this Commonwealth, where its registered office is located, upon application by a shareholder,
208 shall determine otherwise.

209 D. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to
210 an examination of the proxies, any envelopes submitted with those proxies, any information provided in
211 accordance with § 13.1-663 B 2, ballots and the regular books and records of the corporation, except
212 that the inspectors may consider other reliable information for the limited purpose of reconciling proxies
213 and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which
214 represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes
215 than the shareholder holds of record. If the inspectors consider other reliable information for the limited
216 purpose permitted herein, the inspectors at the time they make their certification pursuant to subdivision
217 B (v) of this section shall specify the precise information considered by them including the person or
218 persons from whom they obtained the information, when the information was obtained, the means by
219 which the information was obtained and the basis for the inspectors' belief that such information is
220 accurate and reliable.

221 E. *If authorized by the board of directors, any shareholder vote to be taken by written ballot may be*
222 *satisfied by a ballot submitted by electronic transmission by the shareholder or the shareholder's proxy,*
223 *provided that any such electronic transmission shall either set forth or be submitted with information*
224 *from which it can be determined that the electronic transmission was authorized by the shareholder or*
225 *the shareholder's proxy.*

226 F. Unless otherwise provided in the articles of incorporation or bylaws, subsections A through D of
227 this section shall not apply to a corporation that does not have a class of voting shares that is (i) listed
228 on a national securities exchange, (ii) authorized for quotation on an interdealer quotation system of a
229 registered national securities association, or (iii) held of record by more than 2,000 shareholders.

230 § 13.1-686. Notice of directors' meetings.

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

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

237 C. *Notwithstanding any provision of this chapter to the contrary, a notice of the date, time, place or*
238 *purpose of a regular or special meeting of the board of directors may be given by a form of electronic*
239 *transmission consented to by the director to whom the notice is given. Any such consent of a director*
240 *shall be revocable by the director by written notice to the corporation. Any such consent shall be*
241 *deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive*
242 *notices given by the corporation in accordance with such consent and (ii) such inability becomes known*
243 *to the secretary or other person responsible for the giving of notice; provided, however, the inadvertent*

244 *failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice*
 245 *given by electronic transmission shall be deemed given: (a) if by facsimile telecommunication, when*
 246 *directed to a number at which the director has consented to receive notice; (b) if by electronic mail,*
 247 *when directed to an electronic mail address at which the director has consented to receive notice; (c) if*
 248 *by a posting on an electronic network together with separate notice to the director of such specific*
 249 *posting when such notice is directed to an address at which the director has consented to receive notice,*
 250 *upon the later of such posting or the giving of such separate notice; and (d) if by any other form of*
 251 *electronic transmission, when consented to by the director. An affidavit of the secretary or other agent*
 252 *of the corporation that the notice has been given by a form of electronic transmission shall, in the*
 253 *absence of fraud, be prima facie evidence of the facts stated therein.*

254 § 13.1-803. Definitions.

255 As used in this chapter, unless the context otherwise requires, the term:

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

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

264 "Certificate," when relating to articles filed with the Commission, means the order of the
 265 Commission that makes the articles effective, together with the articles.

266 "Commission" means the State Corporation Commission of Virginia.

267 "Corporation" or "domestic corporation" means a corporation not issuing shares of stock irrespective
 268 of the nature of its business to be transacted, organized under this chapter or existing pursuant to the
 269 laws of this Commonwealth on January 1, 1986, or merged with a corporation of this Commonwealth in
 270 such manner as thereby to become a domestic corporation of this Commonwealth, even though also
 271 remaining a corporation of another state.

272 "Deliver" includes mail.

273 "*Electronic transmission*" means any form of communication, not directly involving the physical
 274 *transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient*
 275 *thereof, and that may be directly reproduced in paper form by such a recipient through an automated*
 276 *process.*

277 "Employee" includes an officer but not a director. A director may accept duties that make him also
 278 an employee.

279 "Entity" includes corporation and foreign corporation; ~~nonstock~~ stock corporation; profit and
 280 not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or more
 281 persons having a joint or common economic interest; and state, United States and foreign government.

282 "Foreign corporation" means a corporation not issuing shares and organized under laws other than the
 283 laws of this Commonwealth.

284 "Individual" includes the estate of an incapacitated or deceased individual.

285 "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course
 286 of its business.

287 "Member" means one having membership rights in a corporation in accordance with the provisions of
 288 its articles of incorporation or bylaws.

289 "Person" includes individual and entity.

290 "Principal office" means the office, in or out of this Commonwealth, where the principal executive
 291 offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or
 292 out of this Commonwealth, so designated by the board of directors. The designation of the principal
 293 office in the most recent annual report filed pursuant to § 13.1-936 shall be conclusive for purposes of
 294 this chapter.

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

297 "Record date" means the date established under Article 7 (§ 13.1-837 et seq.) of this chapter on
 298 which a corporation determines the identity of its members for purposes of this chapter.

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

300 "Voting group" means all members of one or more classes that under the articles of incorporation or
 301 this chapter are entitled to vote and be counted together collectively on a matter at a meeting. All
 302 members entitled by the articles of incorporation or this chapter to vote generally on the matter are for
 303 that purpose a single voting group.

304 § 13.1-842. Notice of meetings.

305 A. 1. A corporation shall give members written notice of the date, time and place of each annual and
 306 special members' meeting. Such notice shall be given, either personally or by mail, no less than ten nor
 307 more than sixty days before the date of the meeting except that notice of a members' meeting to act on
 308 an amendment of the articles of incorporation, a plan of merger, a proposed sale of assets pursuant to
 309 § 13.1-900 or the dissolution of the corporation shall be given not less than twenty-five nor more than
 310 sixty days before the meeting.

311 2. In lieu of delivering notice as specified in subdivision 1 of this subsection, the corporation may
 312 publish such notice at least once a week for two successive calendar weeks in a newspaper published in
 313 the city or county in which the registered office is located, or having a general circulation therein, the
 314 first publication to be not more than sixty days, and the second not less than seven days, before the date
 315 of the meeting.

316 3. *In lieu of delivering notice as specified in subdivision 1 of this subsection, the corporation may*
 317 *give members written notice of the date, time and place of each annual and special members' meeting*
 318 *by a form of electronic transmission consented to by the member to whom the notice is given. A notice*
 319 *given by a form of electronic transmission shall be given as far in advance of the meeting as would be*
 320 *required if the notice was delivered as specified in subdivision 1 of this subsection. Any such consent of*
 321 *a member shall be revocable by the member by written notice to the corporation. Any such consent*
 322 *shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two*
 323 *consecutive notices given by the corporation in accordance with such consent and (ii) such inability*
 324 *becomes known to the secretary or other person responsible for the giving of notice; provided, however,*
 325 *the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other*
 326 *action.*

327 4. Unless this chapter or the articles of incorporation require otherwise, the corporation is required
 328 to give notice only to each member entitled to vote at such meeting.

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

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

332 D. If not otherwise fixed under § 13.1-840 or § 13.1-844, the record date for determining members
 333 entitled to notice of and to vote at an annual or special meeting is the close of business on the day
 334 before the effective date of the notice to the members.

335 E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different
 336 date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or
 337 place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is
 338 or shall be fixed by the bylaws, however, the notice of the adjourned meeting shall be given under this
 339 section to persons who are members as of the new record date.

340 F. *Notice given pursuant to subdivision A. 3. of this section shall be deemed given: (i) if by facsimile*
 341 *telecommunication, when directed to a number at which the member has consented to receive notice; (ii)*
 342 *if by electronic mail, when directed to an electronic mail address at which the member has consented to*
 343 *receive notice; (iii) if by a posting on an electronic network together with separate notice to the member*
 344 *of such specific posting when such notice is directed to an address at which the member has consented*
 345 *to receive notice, upon the later of (a) such posting or (b) the giving of such separate notice; and (iv) if*
 346 *by any other form of electronic transmission, when consented to by the member. An affidavit of the*
 347 *secretary or other agent of the corporation that the notice has been given by a form of electronic*
 348 *transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.*

349 § 13.1-846. Voting entitlement of members.

350 A. Members shall not be entitled to vote except as the right to vote shall be conferred by the articles
 351 of incorporation or if the articles of incorporation so provide, in the bylaws.

352 B. When directors or officers are to be elected by members, the bylaws may provide that such
 353 elections may be conducted by mail. *If authorized by the board of directors, any requirement that any*
 354 *vote of the members be made by written ballot may be satisfied by a ballot submitted by electronic*
 355 *transmission, provided that any such electronic transmission shall either set forth or be submitted with*
 356 *information from which it can be determined that the electronic transmission was authorized by the*
 357 *member or the member's proxy.*

358 C. Unless the articles of incorporation provide otherwise, in the election of directors every
 359 member, regardless of class, is entitled to one vote for as many persons as there are directors to be
 360 elected at that time and for whose election the member has a right to vote.

361 D. If a corporation has no members or its members have no right to vote, the directors shall have
 362 the sole voting power.

363 § 13.1-847. Proxies.

364 A. A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws
 365 otherwise provide, by proxy. *In either event, the vote of the member or the member's proxy may be*
 366 *submitted by electronic transmission if authorized as provided in subsection B of § 13.1-846.*

367 B. Without limiting the manner in which a member may authorize another person or persons to act
 368 for him as proxy pursuant to subsection A of this section, the following shall constitute a valid means
 369 by which a member may grant such authority:

370 1. A member may execute a writing authorizing another person or persons to act for him as proxy.
 371 Execution may be accomplished by the member or his authorized officer, director, employee or agent
 372 signing such writing or causing his signature to be affixed to such writing by any reasonable means,
 373 including, but not limited to, by facsimile signature.

374 2. A member may authorize another person or persons to act for him as proxy by transmitting or
 375 authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the
 376 person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service
 377 organization or like agent duly authorized by the person who will be the holder of the proxy to receive
 378 such transmission, provided that any such telegram, cablegram or other means of electronic transmission
 379 must either set forth or be submitted with information from which the inspectors of election can
 380 determine that the telegram, cablegram or other electronic transmission was authorized by the member.
 381 If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the
 382 inspectors, or if there are no inspectors, such other persons making that determination, shall specify the
 383 information upon which they relied.

384 3. Any copy, facsimile telecommunications or other reliable reproduction of the writing or
 385 transmission created pursuant to this subsection may be substituted or used in lieu of the original writing
 386 or transmission for any and all purposes for which the original writing or transmission could be used,
 387 provided that such copy, facsimile telecommunication or other reproduction shall be a complete
 388 reproduction of the entire original writing or transmission.

389 C. An appointment of a proxy becomes effective when received by the secretary or other officer or
 390 agent authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is
 391 expressly provided in the appointment form.

392 D. An appointment of a proxy is revocable by the member unless the appointment form
 393 conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments
 394 coupled with an interest include the appointment of:

395 1. A creditor of the corporation who extended it credit under terms requiring the appointment; or

396 2. An employee of the corporation whose employment contract requires the appointment.

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

401 F. An appointment made irrevocable under subsection D of this section is revoked when the interest
 402 with which it is coupled is extinguished.

403 G. Subject to § 13.1-848 and to any express limitation on the proxy's authority appearing on the face
 404 of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of
 405 the member making the appointment.

406 H. Any fiduciary who is entitled to vote any shares may vote such shares by proxy.

407 § 13.1-866. Notice of directors' meetings.

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

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

414 C. *Notwithstanding any provision of this chapter to the contrary, a notice of the date, time, place or*
 415 *purpose of a regular or special meeting of the board of directors may be given by a form of electronic*
 416 *transmission consented to by the director to whom the notice is given. Any such consent of a director*
 417 *shall be revocable by the director by written notice to the corporation. Any such consent shall be*
 418 *deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive*
 419 *notices given by the corporation in accordance with such consent and (ii) such inability becomes known*
 420 *to the secretary or other person responsible for the giving of notice; provided, however, the inadvertent*
 421 *failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice*
 422 *given by electronic transmission shall be deemed given: (a) if by facsimile telecommunication, when*
 423 *directed to a number at which the director has consented to receive notice; (b) if by electronic mail,*
 424 *when directed to an electronic mail address at which the director has consented to receive notice; (c) if*
 425 *by a posting on an electronic network together with separate notice to the director of such specific*
 426 *posting when such notice is directed to an address at which the director has consented to receive notice,*
 427 *upon the later of such posting or the giving of such separate notice; and (d) if by any other form of*

428 *electronic transmission, when consented to by the director. An affidavit of the secretary or other agent*
429 *of the corporation that the notice has been given by a form of electronic transmission shall, in the*
430 *absence of fraud, be prima facie evidence of the facts stated therein.*