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HOUSE BILL NO. 2961

Offered January 10, 2007

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A BILL to amend and reenact §§ 13.1-603, 13.1-610, 13.1-658, 13.1-663, 13.1-664.1, 13.1-686, 13.1-803, 13.1-810, 13.1-842, 13.1-846, and 13.1-847 of the Code of Virginia, relating to corporations; giving notice and allowing voting by electronic transmission.

 Patron—Bell

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, 13.1-663, 13.1-664.1, 13.1-686, 13.1-803, 13.1-810, 13.1-842, 13.1-846, and 13.1-847 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 consolidation, serial designation, reduction, correction, and merger, except for a certificate of merger with a subsidiary pursuant to § 13.1-719 that does not include an amendment to the survivor's articles of incorporation. It excludes articles of exchange filed by an acquiring corporation. When the articles of incorporation have been restated pursuant to any articles of amendment, domestication, or merger, it includes only the restated articles of incorporation, including any articles of serial designation, without the accompanying articles of amendment, domestication, 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 chapter or existing pursuant to the laws of the Commonwealth on January 1, 1986, or which, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of the Commonwealth, even though also being a corporation organized under laws other than the laws of the Commonwealth, or which has become a domestic corporation of the 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" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission.

"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.

"Disinterested director" means, except with respect to Article 14 (§ 13.1-725 et seq.) of this chapter, a director who, at the time action is to be taken under § 13.1-672.4, 13.1-691, 13.1-699 or 13.1-701, does not have (i) a financial interest in a matter that is the subject of such action or (ii) a familial, financial, professional, employment or other relationship with a person who has a financial interest in the matter, either of which would reasonably be expected to affect adversely the objectivity of the director when participating in the action, and if the action is to be taken under § 13.1-699 or 13.1-701, is also not a party to the proceeding. The presence of one or more of the following circumstances shall not by itself prevent a person from being a disinterested director: (i) nomination or election of the director to the current board by any person, acting alone or participating with others, who is so interested in the matter; (ii) service as a director of another corporation of which an interested person is also a director; or (iii) at the time action is to be taken under § 13.1-672.4, status as a named defendant, as a director against whom action is demanded, or as a director who approved the act being challenged.

"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,

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HB2961

59 redemption, or other acquisition of shares; a distribution of indebtedness of the corporation; or
60 otherwise. Distribution does not include acquisition by a corporation of its shares from the estate or
61 personal representative of a deceased shareholder, or any other shareholder, but only to the extent the
62 acquisition is effected using the proceeds of insurance on the life of such deceased shareholder and the
63 board of directors approved the policy and the terms of the redemption prior to the shareholder's death.

64 "Domestic business trust" has the same meaning as specified in § 13.1-1201.

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

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

67 "Domestic nonstock corporation" has the same meaning as "domestic corporation" as specified in
68 § 13.1-803.

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

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

73 "Electronic transmission" means any form of communication, not directly involving the physical
74 transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient
75 thereof, and that may be directly reproduced in paper form by such a recipient through an automated
76 process, *including but not limited to communications by electronic mail*. Any term used in this definition
77 that is defined in § 59.1-480 shall have the meaning set forth in such section.

78 "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonstock
79 corporation.

80 "Eligible interests" means interests or memberships.

81 "Employee" includes, unless otherwise provided in the bylaws, an officer but not a director. A
82 director may accept duties that make him also an employee.

83 "Entity" includes any domestic or foreign corporation; any domestic or foreign nonstock corporation;
84 any domestic or foreign unincorporated entity; any estate or trust; and any state, the United States and
85 any foreign government.

86 "Foreign business trust" has the same meaning as specified in § 13.1-1201.

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

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

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

91 "Foreign nonstock corporation" has the same meaning as "foreign corporation" as specified in
92 § 13.1-803.

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

97 "Foreign registered limited liability partnership" has the same meaning as specified in § 50-73.79.

98 "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed
99 by an organic law of a jurisdiction other than the Commonwealth.

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

101 "Includes" denotes a partial definition.

102 "Individual" means a natural person.

103 "Interest" means either or both of the following rights under the organic law of an unincorporated
104 entity:

105 1. The right to receive distributions from the entity either in the ordinary course or upon liquidation;
106 or

107 2. The right to receive notice or vote on issues involving its internal affairs, other than as an agent,
108 assignee, proxy or person responsible for managing its business and affairs.

109 "Means" denotes an exhaustive definition.

110 "Membership" means the rights of a member in a domestic or foreign nonstock corporation or
111 limited liability company.

112 "Notice" is defined in § 13.1-610.

113 "Organic document" means the document, if any, that is filed of public record to create an
114 unincorporated entity. Where an organic document has been amended or restated, the term means the
115 organic document as last amended or restated.

116 "Organic law" means the statute governing the internal affairs of a domestic or foreign corporation or
117 eligible entity.

118 "Person" includes an individual and an entity.

119 "Principal office" means the office, in or out of the Commonwealth, where the principal executive
120 offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or

out of the Commonwealth, so designated by the board of directors. The designation of the principal office in the most recent annual report filed pursuant to § 13.1-775 shall be conclusive for purposes of this chapter.

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

"Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

"Record date" means the date established under Article 7 (§ 13.1-638 et seq.) or Article 8 (§ 13.1-654 et seq.) of this chapter on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determination shall be made as of the close of business at the principal office of the corporation on the record date unless another time for doing so is specified when the record date is fixed.

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

"Shares" means the units into which the proprietary interests in a corporation are divided.

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

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

"Subsidiary" means, as to any corporation, any other corporation of which it owns, directly or indirectly, voting shares entitled to cast a majority of the votes entitled to be cast generally in an election of directors of such other corporation.

"Unincorporated entity" or "domestic unincorporated entity" means a domestic partnership, limited liability company, limited partnership or business trust.

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

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

"Voting power" means the current power to vote in the election of directors.

"Written notice" includes a notice sent via electronic transmission.

§ 13.1-610. Notice.

For purposes of this chapter, except for notice to or from the Commission:

A. Notice shall be in writing except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws. ~~Notice by electronic transmission is written notice.~~

B. Notice may be communicated in person; by mail or other method of delivery; *by electronic transmission*; or by telephone, voice mail, or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where the notice is intended to be given, or by radio, television or other form of public broadcast communication in the area where the notice is intended to be given.

C. Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective (i) upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (ii) when electronically transmitted to the shareholder ~~in a manner authorized by the shareholder.~~

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

E. Except as provided in subsection C, written notice, if in a comprehensible form, is effective at the earliest of the following:

1. When received;
2. Five days after its deposit in the United States mail if mailed postpaid and correctly addressed;
3. On the date shown on the return receipt if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

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

G. When this chapter prescribes notice requirements for particular circumstances, those requirements

182 govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this
183 section or other provisions of this chapter, those requirements govern.

184 H. Without limiting the manner by which notice otherwise may be given effectively to shareholders,
185 any notice to shareholders given by the corporation, under any provision of this chapter, the articles of
186 incorporation or the bylaws, shall be effective if given by a form of electronic transmission ~~consented to~~
187 ~~by the shareholder to whom the notice is given.~~ Any such consent shall be revocable by the shareholder
188 by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is
189 unable to deliver by electronic transmission two consecutive notices given by the corporation in
190 accordance with such consent and (ii) such inability becomes known to the secretary or an assistant
191 secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice;
192 provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any
193 meeting or other action. Notice given pursuant to this subsection shall be deemed given: (a) if by
194 facsimile telecommunication, when directed to a number at which the shareholder has consented to
195 receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the
196 shareholder has consented to receive notice; (c) if by a posting on an electronic network together with
197 separate notice to the shareholder of such specific posting when such notice is directed to the record
198 address of the shareholder or to such other address ~~at which~~ *that* the shareholder has ~~consented to~~
199 ~~receive~~ *provided for the purpose of receiving* notice, upon the later of such posting or the giving of such
200 separate notice; and (d) if by any other form of electronic transmission, when consented to by the
201 shareholder. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent
202 of the corporation that the notice has been given by a form of electronic transmission shall, in the
203 absence of fraud, be prima facie evidence of the facts stated therein. This subsection shall not apply to
204 subsection D of § 13.1-642.

205 I. Without limiting the manner by which notice otherwise may be given effectively to shareholders,
206 any notice to shareholders given by a public corporation, under any provision of this chapter, the articles
207 of incorporation or the bylaws, shall be effective if given in a manner permitted by the rules and
208 regulations under the Securities Exchange Act of 1934, provided that the corporation has first received
209 any affirmative written consent or implied consent required under those rules and regulations.

210 § 13.1-658. Notice of meeting.

211 A. A corporation shall notify shareholders of the date, time, and place of each annual and special
212 shareholders' meeting *in a form authorized pursuant to § 13.1-610, including by electronic transmission.*
213 Such notice shall be given no less than 10 nor more than 60 days before the meeting date except that
214 notice of a shareholders' meeting to act on an amendment of the articles of incorporation, a plan of
215 merger, share exchange, domestication or entity conversion, a proposed sale of assets pursuant to
216 § 13.1-724, or the dissolution of the corporation shall be given not less than 25 nor more than 60 days
217 before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the
218 corporation is required to give notice only to shareholders entitled to vote at the meeting.

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

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

222 D. If not otherwise fixed under § 13.1-656 or 13.1-660, the record date for determining shareholders
223 entitled to notice of and to vote at an annual or special meeting is the day before the effective date of
224 the notice to shareholders.

225 E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different
226 date, time, or place notice need not be given if the new date, time, or place is announced at the meeting
227 before adjournment. If a new record date for the adjourned meeting is or shall be fixed under
228 § 13.1-660, however, notice of the adjourned meeting shall be given under this section to persons who
229 are shareholders as of the new record date.

230 F. Notwithstanding the foregoing, no notice of a shareholder's meeting need be given to a
231 shareholder if (i) an annual report and proxy statements for two consecutive annual meetings of
232 shareholders or (ii) all, and at least two, checks in payment of dividends or interest on securities during
233 a 12-month period, have been sent by first-class United States mail, addressed to the shareholder at the
234 shareholder's address as it appears on the share transfer books of the corporation, and returned
235 undeliverable. The obligation of the corporation to give notice of shareholders' meetings to any such
236 shareholder shall be reinstated once the corporation has received a new address for such shareholder for
237 entry on its share transfer books.

238 G. [Repealed.]

239 § 13.1-663. Proxies.

240 A. A shareholder may vote the shareholder's shares in person or by proxy.

241 B. A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or
242 otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An
243 electronic transmission shall contain or be accompanied by information from which one can determine

that the shareholder, the shareholder's agent or the shareholder's attorney-in-fact authorized the transmission. Any copy, facsimile telecommunication or other reliable reproduction of the writing or *electronic* transmission created pursuant to this subsection, *including but not limited to a printed copy of a communication sent by electronic mail*, may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or *electronic* transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or *electronic* transmission.

C. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspectors of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

1. A pledgee;
2. A person who purchased or agreed to purchase the shares;
3. A creditor of the corporation who extended it credit under terms requiring the appointment;
4. An employee of the corporation whose employment contract requires the appointment; or
5. A party to a voting agreement created under § 13.1-671.

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

F. An appointment made irrevocable under subsection D is revoked when the interest with which it is coupled is extinguished.

G. A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

H. Subject to § 13.1-665 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

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

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

A. A public corporation shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders and make a written report of the inspector's determinations. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of shareholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability.

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

C. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the circuit court of the city or county where the corporation's principal office is located or, if none in this Commonwealth, where its registered office is located, upon application by a shareholder, shall determine otherwise.

D. In determining the validity of proxies and ballots and in counting the votes, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with § 13.1-663 B, ballots and the regular books and records of the corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons that represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the shareholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to clause (v) of subsection B shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by

305 which the information was obtained and the basis for the inspectors' belief that such information is
306 accurate and reliable.

307 E. ~~If authorized~~ *Unless prohibited by the board of directors articles of incorporation or bylaws*, any
308 shareholder vote to be taken by written ballot may be satisfied by a ballot submitted by electronic
309 transmission by the shareholder or the shareholder's proxy, provided that any such electronic
310 transmission shall either set forth or be submitted with information from which it can be determined that
311 the electronic transmission was authorized by the shareholder or the shareholder's proxy.

312 § 13.1-686. Notice of board of directors' meetings.

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

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

319 C. Notwithstanding any provision of this chapter to the contrary, a notice of the date, time, place or
320 purpose of a regular or special meeting of the board of directors may be given by a form of electronic
321 transmission ~~consented to by the director to whom the notice is given. Any such consent of a director~~
322 ~~shall be revocable by the director by written notice to the corporation. Any such consent shall be~~
323 ~~deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive~~
324 ~~notices given by the corporation in accordance with such consent and (ii) such inability becomes known~~
325 ~~to the secretary or other person responsible for the giving of notice; however, the inadvertent failure to~~
326 ~~treat such inability as a revocation shall not invalidate any meeting or other action. Notice given by~~
327 ~~electronic transmission shall be deemed given: (a) if by facsimile telecommunication, when directed to a~~
328 ~~number at which the director has consented to receive notice; (b) if by electronic mail, when directed to~~
329 ~~an electronic mail address at which the director has consented to receive notice; (c) if by a posting on~~
330 ~~an electronic network together with separate notice to the director of such specific posting when such~~
331 ~~notice is directed to an address at which the director has consented to receive provided for the purpose~~
332 ~~of receiving notice, upon the later of such posting or the giving of such separate notice; and (d) if by~~
333 ~~any other form of electronic transmission, when consented to by the director. An affidavit of the~~
334 ~~secretary or other agent of the corporation that the notice has been given by a form of electronic~~
335 ~~transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.~~

336 § 13.1-803. Definitions.

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

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

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

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

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

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

354 "Deliver" ~~includes~~ *or "delivery" means any method of delivery used in conventional commercial*
355 *practice, including delivery by hand, mail, commercial delivery, and electronic transmission.*

356 "Electronic transmission" means any form of communication, not directly involving the physical
357 transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient
358 thereof, and that may be directly reproduced in paper form by such a recipient through an automated
359 process, *including but not limited to communications by electronic mail.* Any term used in this definition
360 that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set
361 forth in such section. For purposes of §§ 13.1-841 and 13.1-865, a written consent and the signing
362 thereof may be accomplished by one or more electronic transmissions.

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

365 "Entity" includes corporation and foreign corporation; stock corporation; profit and not-for-profit
366 unincorporated association; business trust, estate, partnership, trust, and two or more persons having a

joint or common economic interest; and state, United States and foreign government.

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

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

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

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

"Person" includes individual and entity.

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

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

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

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

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

"Written notice" includes a notice sent via electronic transmission.

§ 13.1-810. Notice.

For purposes of this chapter:

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

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

C. Written notice by a domestic or foreign corporation to its member, if in a comprehensible form, is effective ~~when mailed~~, (i) upon deposit in the United States mail, if mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members, or (ii) when electronically transmitted to the member.

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

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

1. When received;

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

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

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

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

§ 13.1-842. Notice of meetings.

A. 1. A corporation shall give members written notice of the date, time and place of each annual and special members' meeting in a form authorized by § 13.1-810, including by electronic transmission. Such notice shall be given, ~~either personally or by mail~~, no less than ten nor more than sixty days before the date of the meeting except that notice of a members' meeting to act on an amendment of the articles of incorporation, a plan of merger, a proposed sale of assets pursuant to § 13.1-900 or the dissolution of the corporation shall be given not less than twenty-five nor more than sixty days before the meeting.

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

433 3. In lieu of delivering notice as specified in subdivision 1 of this subsection, the corporation may
434 give members written notice of the date, time and place of each annual and special members' meeting
435 by a form of electronic transmission ~~consented to by the member to whom the notice is given~~. A notice
436 given by a form of electronic transmission shall be given as far in advance of the meeting as would be
437 required if the notice was delivered as specified in subdivision 1 of this subsection. Any such consent of
438 a member shall be revocable by the member by written notice to the corporation. Any such consent
439 shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two
440 consecutive notices given by the corporation in accordance with such consent and (ii) such inability
441 becomes known to the secretary or other person responsible for the giving of notice; provided, however,
442 the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other
443 action.

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

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

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

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

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

457 F. Notice given pursuant to subdivision A 3 of this section shall be deemed given: (i) if by facsimile
458 telecommunication, when directed to a number at which the member has consented to receive notice; (ii)
459 if by electronic mail, when directed to the record address of the member or to such other electronic mail
460 address ~~at which provided by the member has consented to receive notice~~; (iii) if by a posting on an
461 electronic network together with separate notice to the member of such specific posting when such
462 notice is directed to an address ~~at which provided by the member has consented to receive notice~~, upon
463 the later of such posting or the giving of such separate notice; and (iv) if by any other form of
464 electronic transmission, when consented to by the member. An affidavit of the secretary or other agent
465 of the corporation that the notice has been given by a form of electronic transmission shall, in the
466 absence of fraud, be prima facie evidence of the facts stated therein.

467 § 13.1-846. Voting entitlement of members.

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

470 B. When directors or officers are to be elected by members, the bylaws may provide that such
471 elections may be conducted by mail. ~~If authorized~~ *Unless prohibited by the board of directors articles of*
472 *incorporation or bylaws*, any requirement that any vote of the members be made by written ballot may
473 be satisfied by a ballot submitted by electronic transmission, provided that any such electronic
474 transmission shall either set forth or be submitted with information from which it can be determined that
475 the electronic transmission was authorized by the member or the member's proxy.

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

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

481 § 13.1-847. Proxies.

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

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

488 1. A member may execute a writing authorizing another person or persons to act for him as proxy.
489 Execution may be accomplished by the member or his authorized officer, director, employee or agent

490 signing such writing or causing his signature to be affixed to such writing by any reasonable means,
491 including, but not limited to, by facsimile signature.

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

502 3. Any copy, facsimile telecommunications or other reliable reproduction of the writing or
503 transmission created pursuant to this subsection may be substituted or used in lieu of the original writing
504 or *electronic* transmission for any and all purposes for which the original writing or transmission could
505 be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete
506 reproduction of the entire original writing or *electronic* transmission.

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

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

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

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

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

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

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

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