

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 267

An Act to amend and reenact § 13.1-657 of the Code of Virginia, relating to stock corporations; action by shareholders without meeting.

[H 1559]

Approved March 9, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 13.1-657 of the Code of Virginia is amended and reenacted as follows:

§ 13.1-657. Action without meeting.

A. Action required or permitted by this chapter to be adopted or taken at a shareholders' meeting may be adopted or taken without a meeting if the action is adopted or taken by all the shareholders entitled to vote on the action, in which case no action by the board of directors shall be required. The adoption or taking of the action shall be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, bearing the date of each signature, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

B. The articles of incorporation may authorize action by shareholders by less than unanimous written consent provided that the taking of such action is consistent with any requirements that may be set forth in the corporation's articles of incorporation, the bylaws, or this section. ~~For such action; however, unless the articles of incorporation of a public corporation authorized action by shareholders by less than unanimous written consent as of April 1, 2018, the shareholders of the public corporation shall not be entitled to act by less than unanimous written consent even if so authorized by the articles of incorporation if the articles of incorporation or bylaws of such public corporation allow the holders of 30 percent or fewer of all votes entitled to be cast to demand the calling of a special meeting of shareholders. For action by shareholders by less than unanimous written consent to be valid:~~

1. It shall be an action that this chapter requires or permits to be adopted or taken at a shareholders' meeting;

2. The corporation's articles of incorporation shall authorize action by shareholders by less than unanimous written consent and, if a public corporation at the time of such authorization *and in addition to the other limitations in this subsection B*, the inclusion of the authorization in the articles of incorporation shall be approved by each voting group entitled to vote by the greater of:

a. The vote of that voting group required by the corporation's articles of incorporation to amend the articles of incorporation; and

b. More than two-thirds of all votes that the voting group is entitled to cast on the amendment;

3. Before the holders of more than 10 percent of the outstanding shares of any voting group entitled to vote on the action to be adopted or taken have executed the written consent, the corporation's secretary shall have received a copy of the form of written consent setting forth the action to be adopted or taken; and

4. The holders of not less than the minimum number of outstanding shares of each voting group entitled to vote on the action that would be required to adopt or take the action at a shareholders' meeting at which all shares of each voting group entitled to vote on the action were present and voted shall have signed written consents setting forth the action to be adopted or taken.

The written consent shall bear the date on which each shareholder signed the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

C. If not otherwise fixed under § 13.1-656 or 13.1-660 and if prior board action is not required respecting the action to be adopted or taken without a meeting, the record date for determining the shareholders entitled to adopt or take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under § 13.1-656 or 13.1-660 and if prior board action is required respecting the action to be adopted or taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to adopt or take the action referred to therein unless, within 60 days of the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by the holders of shares having sufficient votes to adopt or take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to adopt or take the action are delivered to the corporation.

D. A consent signed pursuant to the provisions of this section has the effect of a vote at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written

consents, the action adopted or taken by written consent shall be effective when (i) written consents signed by the holders of shares having sufficient votes to adopt or take the action are delivered to the corporation or (ii) if an effective date is specified therein, as of such date provided such consent states the date of execution by the consenting shareholder.

E. Any person, whether or not then a shareholder, may provide that a consent in writing as a shareholder shall be effective at a future time, including the time when an event occurs, but such future time shall not be more than 60 days after such provision is made. Any such consent shall be deemed to have been made for purposes of this section at the future time so specified for the consent to be effective, provided that (i) the person is a shareholder at such future time and (ii) the person did not revoke the consent prior to such future time. Any such consent may be revoked, in the manner provided in subsection C, prior to its becoming effective.

F. If this chapter requires that notice of a proposed action be given to nonvoting shareholders and the action is to be adopted or taken by written consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the action not more than 10 days after (i) written consents sufficient to adopt or take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection D. The notice shall reasonably describe the action adopted or taken and contain or be accompanied by the same material that under any provision of this chapter would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

G. If action is adopted or taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonconsenting voting shareholders written notice of the action not more than 10 days after (i) written consents sufficient to adopt or take the action have been delivered to the corporation or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection D. The notice shall reasonably describe the action adopted or taken and contain or be accompanied by the same material that under any provision of this chapter would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.