

Update: Virginia Stock and Nonstock Corporation Acts

By Megan Martz Gilliland

Senate Bill 100 was enacted March 21, 2010 as Chapter 782 of the 2010 Regular Session of the General Assembly with an effective date of July 1, 2010. The legislation is in large part an effort to conform provisions of the Virginia Stock Corporation Act with the Model Business Corporation Act prepared by the Business Law Section of the American Bar Association. Some of the major proposed changes are as noted below. Certain corresponding changes have also been made to the Virginia Nonstock Corporation Act pursuant to Senate Bill 131, which was enacted March 13, 2010 as Chapter 171 of the 2010 Regular Session of the General Assembly with an effective date of July 1, 2010.

•**Board Size.** Senate Bill 100 repeals provision in Section 13.1-675(B) of the Code of Virginia (the “Code”) limiting a Board of Directors’ ability to alter its size to an amount not greater than 30 percent of its current size. Corresponding changes have also been made for nonstock corporations under Section 13.1-855(B) of the Code.

•**Class Voting.** Section 13.1-718 of the Code would require, unless otherwise provided in the articles of incorporation, separate voting by voting groups where a class or series of shares will be eliminated in a proposed merger without being converted into another class or series of shares.

•**Electronic Transmission.** The rules regarding electronic transmission of notices for stock corporations would be expanded pursuant to Section 13.1-610 of the Code. Corresponding changes have also been enacted with respect to nonstock corporations pursuant to Section 13.1-810 of the Code.

•**Equity Compensation Awards.** Section 13.1-646(C) of the Code would permit the Board of Directors to give officers the authority to award equity compensation within such limitations established by such Board of Directors.

•**Indemnification.** Senate Bill 100 confirms authority of Board of Directors to require a stock corporation to provide indemnification in accordance with Section 13.1-697 of the Code, and the stock corporation’s corresponding commitment to advance funds or reimburse expenses with respect to such authorized indemnification. In addition, Section 13.1-704(B) of the Code would provide that the applicable standard of conduct for such an obligation by the stock corporation is that the conduct does not constitute willful misconduct or a knowing violation of criminal law (as

opposed to the good faith standard of conduct prescribed in Section 13.1-697(A) of the Code). Corresponding changes have also been made for nonstock corporations pursuant to Section 13.1-883 of the Code.

•**Mailing of Notices.** Senate Bill 100 changes the effective date of notices sent by United States mail. Section 13.1-610 of the Code would provide that a notice to shareholders is considered effective upon its deposit in the United States mail as opposed to five days after deposit in the United States mail. Corresponding changes have also been made for nonstock corporations under Section 13.1-810 of the Code.

•**Record Dates.** Section 13.1-661 of the Code would allow the Board of Directors to establish separate record dates for determining shareholders entitled to notices of, and to vote at, shareholder meetings. Corresponding changes have also been enacted with respect to nonstock corporations in Section 13.1-845 of the Code.

•**Remote Participation.** Section 13.1-660.2 would be added to the Code to allow remote participation by shareholders in both regular and special meetings. The Board of Directors would be authorized to adopt guidelines and procedures for implementing such remote participation. Again, corresponding changes have also been made for nonstock corporations under Section 13.1-844.2 of the Code.

•**Proxies.** Section 13.1-624(C) would be added to the Code to clarify shareholders’ authority to adopt proxy access and reimbursement rules in the bylaws.

•**Shareholder Disputes.** Section 13.1-669.1 would be added to the Code to confirm the jurisdiction of circuit courts to hear disputes of shareholders and directors regarding director elections and would give circuit courts jurisdiction to hear disputes of shareholders regarding other types of voting matters.

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