# RECENT DEVELOPMENTS IN VIRGINIA CORPORATE LAW AND THE CASE FOR VIRGINIA AS A CORPORATE DOMICILE

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In the 2026 session, the Virginia General Assembly adopted a number of amendments to the Virginia Stock Corporation Act (the "Stock Act") as well as a long overdue comprehensive revision of the Virginia Nonstock Corporation Act (the "Nonstock Act").[1] The first part of this article focuses on the Stock Act, including a review of the 2026 amendments. Taking these changes into consideration, we assess the pros and cons of the Commonwealth in the context of the current widespread publicity relating to the selection of the best state in which to incorporate and transact business. We then consider additional changes to the Stock Act that might make the Commonwealth even more attractive. We close with an overview of the Nonstock Act including a review of the principal changes that were enacted in 2026 and will take effect January 1, 2027.

## I. THE STOCK ACT

### A. *Virginia Corporations and the Model Business Corporation Act*

We begin the discussion of the Stock Act by noting the significant number of corporations that rely on the Act. Approximately 102,000 stock corporations are now incorporated in Virginia.[2] That includes a number of publicly traded corporations, many of which also have their principal office or significant operations in the Commonwealth. It also includes many successful privately held or family-controlled corporations.

It also seems appropriate to begin by emphasizing the longstanding link between the Stock Act and the Model Business Corporation Act (the "Model Act"), which is the work product of the Corporate Laws Committee of the Business Law Section of the American Bar Association.[3] The first edition of the Model Act was adopted in the 1950s.[4] Its purpose was to embody "the best in existing [state] statutes," drafted with "simplicity and clarity of

1. *See generally* S.B. 479, Va. Gen. Assembly (Reg. Sess. 2026) (enacted as 2026 Va. Acts ch. 892) (amending the Stock Act); S.B. 246, Va. Gen. Assembly (Reg. Sess. 2026) (enacted as 2026 Va. Acts ch. 394) (amending the Nonstock Act).

2. 123 Va. State Corp. Comm'n Ann. Rep. 753, 753 (2025) [hereinafter 123rd Annual Report].

3. *See generally* Corporate Laws Committee, ABA Business Law Section, *The Model Business Corporation Act at 75*, 80 BUS. LAW. 669 (2025) [hereinafter Corporate Laws Committee] (discussing the Corporate Laws Committee's maintenance of the Model Act).

4. *See generally* AM. BAR ASS'N, *Introduction* to MODEL BUSINESS CORPORATION ACT ANNOTATED, at xi (5th ed. 2020) (reviewing the history of the Model Act).

expression, concise and consistent use of terms, standardization of procedure, and plain and precise language."[5] In 1956, Virginia adopted the Stock Act, which relied heavily on the provisions in the Model Act and effectively made the Commonwealth one of its earliest adopters.[6]

The Model Act was amended periodically between the 1950s and the 1980s. Its first major revision, however, was adopted in 1984,[7] and Virginia was the first state to follow suit by adopting a substantial revision of the Stock Act in 1985.[8] In the years that followed, the Stock Act was often amended every few years to respond to legal or business developments. Many of those amendments tracked revisions to the Model Act to ensure that the Stock Act remained "state-of-the-art."[9]

A second major revision of the Model Act was adopted in 2016 (the "2016 Revision").[10] The 2016 Revision resulted from a multi-year review process undertaken by the Corporate Laws Committee to further improve the Act and ensure that it was written in a single, consistent style.[11] Virginia followed in 2019 with a significant revision to the Stock Act that implemented many of the changes in

5. Ray Garrett, *History, Purpose and Summary of the Model Business Corporation Act*, 6 BUS. LAW. 1, 2–3 (1950).

6. *See* REPORT BY THE CODE COMMISSION OF VIRGINIA FOR REVISION OF THE LAWS RELATING TO CORPORATIONS, H. Doc. No. 5 (1956); *see also* Leonard D. Adkins & Fred N. Gerard, *Developments in Corporate Law*, 14 BUS. LAW. 1094, 1108 (1959) (identifying nine jurisdictions, including Virginia, that adopted the Model Act between 1950 and 1959).

7. *See* Corporate Laws Committee, *supra* note 3, at 672–73; Elliott Goldstein & Robert W. Hamilton, *The Revised Model Business Corporation Act*, 38 BUS. LAW. 1019, 1020–21 (1983); Elliott Goldstein, *Revision of the Model Business Corporation Act*, 63 TEX. L. REV. 1471, 1471 (1985); Robert W. Hamilton, *Reflections of a Reporter*, 63 TEX. L. REV. 1455, 1455–57 (1985).

8. *See* REPORT OF THE VIRGINIA CODE COMMISSION ON THE REVISION OF CHAPTERS 1 AND 2 OF TITLE 13.1 OF THE CODE OF VIRGINIA, H. Doc. No. 13, at 3 (1985); *see generally* Daniel T. Murphy, *The New Virginia Stock Corporation Act: A Primer*, 20 U. RICH. L. REV. 67 (1985) (discussing the 1985 revisions to the Stock Act).

9. *See, e.g.*, VA. CODE ANN. § 13.1-610 (2021) (addressing notice requirements and electronic transmissions, which provisions were significantly amended in 2010); Corporate Laws Committee, *supra* note 3, at 681.

10. *See* Corporate Laws Committee, *Model Business Corporation Act (2016 Revision)*, 72 BUS. LAW. 421, 421 (2017).

11. *See* Corporate Laws Committee, *supra* note 3, at 681 (discussing the 2016 Revision). The 2016 Revision also involved significant revisions to the official comment. *See id.* Although the Commonwealth has not formally adopted the official comment of the Model Act, it is often a helpful tool for interpreting corresponding provisions of the Stock Act. *See* ALLEN C. GOOLSBY & STEVEN M. HAAS, GOOLSBY & HAAS ON VIRGINIA CORPORATIONS, at x (7th ed. 2022).

the 2016 Revision.[12] Since then, the Model Act has continued to be updated, and some of the changes adopted in Virginia's 2026 legislative session reflect changes to the Model Act following the 2016 Revision.[13]

To be sure, there are some key differences between the Model Act and the Stock Act.[14] Nevertheless, it is safe to conclude that Virginia corporation law has benefitted greatly from the Model Act and the work of the Corporate Laws Committee.[15] Through periodic updates, the General Assembly has ensured that the Stock Act remains a modern and sufficiently flexible corporations code that is responsive to the needs of business in an ever-changing environment.

### B. *2026 Amendments to the Stock Act*

With that background, we start our review of the 2026 changes with the most significant of the changes—a rewrite of Code of Virginia section 13.1-691, which addresses conflicting interest transactions. As revised, the substance of section 13.1-691 follows more closely provisions that have been a part of the Model Act for a number of years.[16] Specifically, Subchapter 8F of the Model Act has long provided a "safe harbor" for directors' conflicting interest transactions as long as certain procedures are followed.[17] The 2026 revision also follows changes that Delaware made in 2025 with respect to conflicting interest transactions.[18]

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12. *See* 2019 Va. Acts ch. 734 (codified as amended in scattered sections of §§ 13.1-603 to 13.1-768.1).

13. *See, e.g.*, §§ 13.1-672.1, 13.1-689.1 (Cum. Supp. 2026).

14. For example, the Stock Act provisions relating to directors' standard of conduct (§ 13.1-690) and limitations on liability of directors and officers (§ 13.1-692.1) differ materially from the corresponding provisions of the Model Act (§§ 8.30 and 2.02(b)(4), respectively). §§ 13.1-690, 13.1-692.1 (2021); MODEL BUS. CORP. ACT §§ 2.02, 8.60 (2016) (A.B.A., revised 2016).

15. *See* GOOLSBY & HAAS, *supra* note 11, at ix–xii (discussing the influence of the Model Act on the Stock Act).

16. *See* MODEL BUS. CORP. ACT ch. 8, subch. F (A.B.A. 2025).

17. *See* Committee on Corporate Laws, *Changes in the Model Business Corporation Act—Amendments Pertaining to Directors' Conflicting Interest Transactions*, 44 BUS. LAW. 1307, 1319 (1989).

18. *See* S.S. 1, 85 Del. Laws ch. 6, § 1 (2025). Similar to the pre-2026 version of Code of Virginia section 13.1-691, Section 144 of the DGCL was generally a voidability statute providing that a conflict of interest transaction would not be void solely due to a director's conflict of interest if certain requirements were met. It did not address director or officer liability, although compliance with Section 144's requirements ordinarily was sufficient to

Prior to 2026, section 13.1-691 only addressed conflicting interest transactions between the corporation and one or more of its directors. It now also covers transactions between the corporation and one or more officers as well as transactions between the corporation and related persons of one or more directors or officers.[19] The revised section continues to provide that a conflicted interest transaction is not voidable if (i) the transaction is approved by the disinterested directors on the board or on a board committee, (ii) the transaction is approved by disinterested shareholders, or (iii) the transaction is fair to the corporation.[20] In a major change, however, satisfaction of any of these prerequisites now not only protects the transaction from being voidable, but also protects any director or officer from an award of damages because of the conflict or because the director or officer participated in the corporation's consideration of the transaction.[21] As a result, the 2026 amendment establishes a bright-line safe harbor for a conflict of interest transaction that is approved by disinterested directors or shareholders or determined by a court to be fair to the corporation. This reflects a judgment that the benefits in efficiency by having a clear rule and encouraging disinterested approval will exceed the disadvantages associated with limiting judicial review.[22]

The addition of Code of Virginia section 13.1-689.1 was another important 2026 change. That section now confirms that a Virginia stock corporation can include in any corporate agreement that

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invoke the protections of the business judgment rule. *See generally* Blake Rohrbacher, John Mark Zeberkiewicz & Thomas A. Uebler, *Finding Safe Harbor: Clarifying the Limited Application of Section 144*, 33 DEL. J. CORP. L. 719 (2008) (providing an overview of DGCL Section 144).

19. *See* VA. CODE ANN. § 13.1-691(A) (Cum. Supp. 2026).

20. *Id.*

21. *See generally id.* § 13.1-690 (2021) (Prior to the 2026 revision, a director who was a party to a conflict of interest transaction could be subject to a claim for damages, notwithstanding approval of the transaction by disinterested directors or disinterested shareholders or a determination that the transaction was fair to the corporation. The issue before the court would have been whether with respect to the transaction the director had exercised his or her good faith business judgment of the best interests of the corporation as required by Code of Virginia section 13.1-690).

22. *See* MODEL BUS. CORP. ACT ch. 8, subch. F, INTRO. CMT. (A.B.A., revised 2025) ("Subchapter F reflects the judgment that in corporate matters, where planning is critical, the clear and important efficiency gains that result from certainty through defining director's conflicting interest transactions exceed any potential and uncertain efficiency losses that might follow from excluding other director's transactions from judicial review for fairness on conflict-of-interest grounds."); *cf.* Michael P. Dooley & Michael D. Goldman, *Some Comparisons Between the Model Business Corporation Act and the Delaware General Corporation Law*, 56 BUS. LAW. 737, 744 (2001) ("Subchapter 8F . . . attempts to spell out the rules of the road in the statute itself, rather than rely on case law.").

requires shareholder approval the corporation's commitment to submit the agreed transaction to a vote of its shareholders even if, after the board of directors has approved the agreement, the board determines that it no longer recommends the transaction to shareholders. Prior to adoption of this provision, there was uncertainty whether a Virginia court would uphold a "force the vote" provision when the board of directors no longer supported the transaction.

Most other 2026 Stock Act changes are more technical and are discussed below in the order in which they appear in the Stock Act. Code of Virginia section 13.1-619(A) has been amended to eliminate an ambiguity as to whether a director of the corporation can be designated as the corporation's registered agent in an amendment of the articles of incorporation. While a director can be made the registered agent in the initial articles of incorporation, thereafter, as with any other entity or person, a director can only be made the corporation's registered agent by filing with the State Corporation Commission the Commission's standard form for a change of registered agent.[23]

Code of Virginia section 13.1-632 was amended to eliminate prospectively the ability of a foreign corporation to protect the use of its corporate name by registering the name with the State Corporation Commission. For many years, a foreign corporation could file a form with the State Corporation Commission to (i) register its corporate name with the registration lasting for a year, or (ii) reserve its corporate name, with the reservation only being effective for 120 days. In each case, renewal was permitted at the end of any term. The 2026 change was based on a report from the Clerk's office of the State Corporation Commission that over time a number of foreign corporations were failing to take the necessary steps to qualify to transact business in the Commonwealth based on the faulty assumption that registration of the corporate name was all that was required. The 2026 amendment only eliminates the authorization of new registrations; a corporation that already has registered its name can continue to renew the registration every year. No changes were made in the process for reserving a corporate name.

A series of changes were made in Code of Virginia sections 13.1-639, 13.1-643, 13.1-646, and 13.1-689 to set forth more clearly the

23. §§ 13.1-619(A)(4), 13.1-635(A) (Cum. Supp. 2026 & 2021).

authority of the board of directors to authorize a board committee or one or more officers of the corporation to authorize or approve the issuance of shares or other equity awards of the corporation or to determine the designation and rights, preferences and limitations of a class or series of shares of the corporation. With these amendments, section 13.1-689, which addresses the authority of committees of the board of directors, no longer references the authority of the corporation's officers.

A potentially significant change was made to Code of Virginia section 13.1-671.1, which authorizes an agreement among all then-existing shareholders that includes significant deviations from provisions in the Stock Act relating to the governance of the corporation. The 2026 amendment, which conforms to the 2016 revision of the Model Act,[24] deleted the provision that made any such agreement ineffective when the corporation became a public corporation.[25] With the 2026 amendment, an agreement among shareholders may become an attractive option for a financial sponsor, founding family, or controlling shareholder that wants to adopt significant deviations from the governance provisions in the Stock Act and also has an interest in taking the corporation public.

A number of technical changes were made in Article 8.1 of the Stock Act, which addresses derivative proceedings.[26] For example, Code of Virginia section 13.1-672.1 was amended to include a more precise description of what qualifies as a written demand for the corporation to take action. That section now requires that the written demand "describe in reasonable detail the reasons for the demand and the action being requested and shall state that the shareholder may commence a derivative proceeding if the action is not taken."[27] The specificity that the Code provision now requires

24. *See* AM. BAR ASS'N, *Introduction* to MODEL BUSINESS CORPORATION ACT ANNOTATED, at ix, xx (5th ed. 2020).

25. Code of Virginia section 13.1-603 defines a "public corporation" as one 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. § 13.1-603 (Cum. Supp. 2026).

26. These changes closely followed revisions to the Model Act. *See* Corporate Laws Committee, *Changes in the Model Business Corporation Act—Amendments to Sections 1.43 and 2.08 and Chapter 7D Relating to Derivative Proceedings*, 78 BUS. LAW. 821, 821 (2023).

27. § 13.1-672.1 (Cum. Supp. 2026). As amended, this section also requires a beneficial shareholder or an unrestricted voting trust beneficial owner who makes a written demand to provide evidence of such beneficial ownership. *Id.* § 13.1-672.1(C).

should preclude vague demands that in years past have withstood court challenges.[28]

Section 13.1-689 was amended to clarify the circumstances under which non-board members can serve on a board committee. As revised, the Section confirms that non-board members may serve on a board committee, but, with one important exception, they may not vote on any matter for which the committee is performing a function of the board of directors. In recognition of common practice in corporate financings, the revised section states that non-board members may serve on a board committee that is authorized to approve or authorize the issuance of shares of the corporation or to determine the designation and rights, preferences, and limitations of a class or series of shares of the corporation.[29] Any such committee does not have to have any directors as members and may consist of one or more officers.[30]

Clarifying amendments were made to Code of Virginia section 13.1-724, which addresses the circumstances in which the Stock Act requires shareholder approval of a disposition of the corporation's assets. As amended, the section provides that the board of directors, in making a determination whether the proposed sale is sufficiently material to require shareholder approval, may rely on reasonable accounting practices and principles, a fair valuation, or other method that is reasonable in the circumstances.[31] As amended, the section further provides that for a public corporation, the board of directors' reliance on the most recent financial statements is deemed to be reasonable if the statements have been audited by an independent accounting firm and that firm's opinion does not include a going concern qualification.[32]

Following consultation with the Clerk's Office of the State Corporation Commission, Code of Virginia Section 13.1-741.2 was newly added to provide for dissolution of a corporation not only on the happening of any of the dissolution events specified in Article 16 of the Stock Act, but also at the time of, or the happening of, any event specified in the articles of incorporation or in the bylaws. While the inclusion of such a provision in the articles of

28. *See, e.g.*, Williams v. Stevens, 86 Va. Cir. 385, 389–91 (2013) (City of Norfolk); *see* O'Brien v. Midgett, 93 Va. Cir. 152, 155, 157 (2016) (City of Norfolk).

29. § 13.1-689(F) (Cum. Supp. 2026).

30. *Id.*

31. *Id.* § 13.1-724(A) (Cum. Supp. 2026).

32. *See id.*

incorporation or bylaws is rare, the 2026 amendment confirms that any such provision is valid and enforceable.

Finally, minor changes were made to the list of documents that the corporation is required to maintain and that must be made available for inspection by shareholders. Code of Virginia section 13.1-770(E) was amended (i) to require the corporation to maintain a copy of any agreement among shareholders under section 13.1-671.1 as currently in effect and (ii) to exclude the corporation's financial statements from the requirement that the corporation maintain all written communications to shareholders in the past three years. Note in this regard that Code of Virginia section 13.1-774 provides shareholders with access to the corporation's most recent annual financial statements.

### C. *Virginia as a Corporate Domicile*

With the 2026 amendments to the Stock Act in place, it seems appropriate to make an assessment of Virginia as a state in which to incorporate. For many years not a lot of attention was paid to the selection of a state in which to incorporate. Delaware, with its vast body of case law and highly regarded Court of Chancery and Supreme Court, was the choice for most corporations and especially public corporations. But several controversial Court of Chancery decisions as well as growing concern about the ever-increasing legal costs associated with judicial resolution of shareholder litigation in Delaware have resulted in renewed interest in that issue.[33] Nevada and Texas have led the way, promoting themselves as states in which to incorporate and transact business. In the last several years, Texas has adopted multiple changes to the Texas Business Organizations Code (the "TBOC") that make the state an attractive option, at least from the perspective of a controlling shareholder or a director or officer.[34] In addition, Texas recently

33. *See generally* Sarah Hand and Amy L. Simmerman, *Reflections on the Ongoing Reincorporation Conversation*, WILSON SONSINI GOODRICH & ROSATI (Oct. 14, 2025), https://www.wsgr.com/en/insights/reflections-on-the-ongoing-reincorporation-conversation.html [https://perma.cc/TJ8K-HELQ].

34. *See* Act of May 14, 2025, 2025 Tex. Gen. Laws ch. 21 (amending the TBOC); Act of May 19, 2025, 2025 Tex. Gen. Laws ch. 51 (amending the TBOC); Act of June 20, 2025, 2025 Tex. Gen. Laws ch. 912 (amending laws relating to the Texas Business Court); *see generally* HUNTON ANDREWS KURTH LLP, *New Entity Governance Legislation Passed by Texas Legislature* (May 13, 2025), https://www.hunton.com/insights/legal/new-entity-governance-legislation-passed-by-texas-legislature [https://perma.cc/UV3Y-KWVW] (discussing recent changes to the TBOC); Jonathan Macey & Roberta Romano, *Texas is Disrupting Delaware's*

established a separate business court for handling corporate disputes.[35] With these changes, several high-profile corporations have recently elected to reincorporate in Texas.[36]

With so much attention now being given to selection of the state of incorporation, the absence of any mention of Virginia as an option comes as a bit of a surprise. In recent years the Commonwealth has, on multiple occasions, been selected as one of the best states in which to transact business,[37] but Virginia has received comparatively little attention as an attractive state in which to incorporate. Moreover, the Stock Act remains a modern and flexible corporations code that we believe fairly balances the interests of shareholders, directors, and officers. Why there has been so little consideration of the Commonwealth is an interesting question and one about which we have never seen any discussion.

As a starting point, one has to ask whether it matters whether the Commonwealth is or is not an attractive option. Purely from a state revenue perspective, the benefit to the Commonwealth of being an attractive option is limited because Virginia's maximum annual registration fee for a corporation incorporated in the Commonwealth is capped at $850[38]—a sharp contrast to Delaware, where annual fees for large corporations incorporated in the state can be as high as $250,000.[39]

Notwithstanding, from the perspective of the Commonwealth, being an attractive option as the state of incorporation should be a significant component of the Commonwealth's efforts to be known

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*Dominance Through Innovation*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Mar. 7, 2025), https://corpgov.law.harvard.edu/2025/03/07/texas-is-disrupting-delawares-dominance-through-innovation/ [https://perma.cc/4ZJQ-HVTQ].

35. *See* TEX. GOV'T CODE ANN. § 25A.002 (West 2025).

36. *See* Byron F. Egan, *The Rise of 'DExit': Why Corporations Are Swapping Delaware for Texas*, JACKSON WALKER LLP (June 2, 2026), https://www.jw.com/news/egan-dexit/ [https://perma.cc/Y6KZ-TLUK] (explaining that between 2024 and 2026, Delaware corporations that reincorporated to Texas included, among others, Tesla, Inc., SpaceX, Coinbase Global, Inc., Dillard's, Inc., and ArcBest Corporation, and recently in May 2026, ExxonMobil's shareholders approved a redomestication from New Jersey to Texas).

37. *See, e.g.*, Scott Cohn, *Virginia is America's Top State for Business in 2024, with the Nation's Best Schools and Solid Infrastructure,* CNBC, (July 11, 2024, 9:41 AM), https://www.cnbc.com/2024/07/11/virginia-americas-top-state-for-business-nations-best-schools-solid-infrastructure.html [https://perma.cc/H5NP-K6P5]; *see, e.g.*, Kate Andrews, *Virginia Ranks No. 3 in CNBC Top States for Business List*, VA. BUS., (July 9, 2026), https://virginiabusiness.com/virginia-ranked-no-3-in-cnbc-top-states-for-business-list/?oly_enc_id=3247F9882912E7W [https://perma.cc/AK6S-2HA4].

38. VA. CODE ANN. § 13.1-775.1 (2021).

39. *See* DEL. CODE ANN. tit. 8, § 503 (2025).

as one of the best states in which to transact business. Also important, being recognized as an attractive state in which to incorporate can be an important component of any package of benefits that the Commonwealth may use to attract new business to the Commonwealth. As such, it is important for the Commonwealth to consider what other states—including Texas—are doing from a corporate law perspective to attract business.

That leads us to the more fundamental question: does Virginia remain, in fact, an attractive state in which to incorporate? We start with an assessment of the Stock Act with its 2026 revisions. Consider the pro-director statutory standard of conduct that requires the director to use their good faith business judgment of the best interests of the corporation.[40] When that standard was adopted in 1985, the General Assembly intentionally omitted the Model Act requirement that the director's action be measured against what a hypothetical reasonable person would have done in the same circumstances.[41] Rather, the Stock Act's standard of conduct is based on whether the director acted in good faith.[42] The

40. VA. CODE ANN. § 13.1-690 (2021).

41. *See* WLR Foods, Inc. v. Tyson Foods, Inc., 65 F.3d 1172, 1185 (4th Cir. 1995) ("Section 690, however, contains no reference to the 'reasonable person.' *In fact, the Virginia legislature expressly chose to reject the Model Act standard . . .*") (emphasis added); WLR Foods, Inc. v. Tyson Foods, Inc., 857 F. Supp. 492, 494 (W.D. Va. 1994) (explaining that the omission of the Model Act's reasonableness standard "signals legislative rejection of a substantive evaluation of director conduct, that is, evaluation in terms of the rationality of the conduct" and that "courts are required to find some other indicia of 'good faith business judgment of the best interests of the corporation,' which is the standard to which directors are now held pursuant to § 13.1-690."); *see also* REPORT OF THE VIRGINIA CODE COMMISSION STUDYING THE REVISION OF CHAPTERS 1 AND 2 OF TITLE 13.1 OF THE CODE OF VIRGINIA, H. Doc. No. 13, at 51 (1985) (explaining that "significant changes" were made to section 13.1-690 in comparison to the Model Act); Joint Bar Committee Commentary to Va. Code Ann. § 13.1-690 (1984) (contrasting the Code of Virginia's standard of conduct for directors with the Model Act); Murphy, *supra* note 8, at 104–05 (stating that section 13.1-690's standard of conduct "departs radically from the Model Act"); GOOLSBY & HAAS, *supra* note 11, at 200-01 (explaining that "[s]ection 13.1-690 was drafted in reaction to a perceived trend of the courts to expose directors to expanding risk . . . as a result of a mistake in judgment" and that Virginia's statute deviated from the Model Act).

42. *See, e.g.*, Willard v. Moneta Bldg. Supply, Inc., 258 Va. 140, 151, 515 S.E.2d 277, 284 (1999) ("The contrast between the provisions of Code [of Virginia] § 13.1-690 and those contained in § 8.30 of the [Model Act] convinces us that, in Virginia, a director's discharge of duties is not measured by what a reasonable person would do in similar circumstances or by the rationality of the ultimate decision. Instead, a director must act in accordance with his/her good faith business judgment of what is in the best interests of the corporation."); Malon v. Franklin Fin. Corp., No. 3:14CV671-HEH, 2014 U.S. Dist. LEXIS 166675, at *11 (E.D. Va. Dec. 2, 2014) ("In the Commonwealth of Virginia, the fidelity with which a corporate director discharges his or her duties is not measured by 'what a reasonable person would do in similar circumstances or by the rationality of the ultimate decision.'"); *WLR Foods*, 857 F. Supp. at 494 (stating that "good faith is to be measured by the directors' resort

General Assembly did that intentionally so that well-intentioned directors would not fear being second-guessed by a judge or jury if a business decision turned out poorly.[43]

Federal and state courts in the Commonwealth have consistently construed this subjective standard to examine good faith by focusing on whether directors engaged in an informed and deliberative decision-making process without any consideration of the reasonableness of any board decision.[44] Further, the plaintiff has the burden of proving that the director failed to meet the statutory standard.[45] In addition, unless a director has knowledge or information that makes reliance unwarranted, he or she in making any decision is entitled to rely on the corporation's officers and advisors as well as any board committee of which he or she is not a member.[46]

Note also the additional protections afforded to both directors and officers under Code of Virginia section 13.1-692.1, which imposes a default cap on damages, and authorizes Virginia corporations to go further and eliminate liability in their articles of incorporation. In our experience, Virginia corporations frequently adopt provisions eliminating liability to the fullest extent authorized under the Stock Act. The only exceptions to exculpation are for "willful misconduct or a knowing violation of the criminal law or of any

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to an informed decision making [sic] process, not by the rationality of the decision ultimately taken"). *See also* Joint Bar Committee Commentary to Va. Code Ann. § 13.1-690 (1984) ("[T]he trier will merely look to the good faith decision of the director of what is in the best interest of the corporation."); GOOLSBY & HAAS, *supra* note 11, at 201 (stating that directors are not "subjected to the risk of hindsight associated with having to establish the reasonableness" of their belief and that "[t]he Virginia standard [] reflects the concept that traditional tort law theories of negligence and gross negligence should not be the litmus test for judging director conduct"); Murphy, *supra* note 8, at 108 ("The trier of fact need only find good faith and determine whether the conduct in question was a product of the director's own business judgment of what is in the best interest of the corporation.").

43. *See* Joint Bar Committee Commentary to Va. Code Ann. § 13.1-690 (1984); GOOLSBY & HAAS, *supra* note 11, at 201 (noting that "there would appear to be substantial benefits not only to directors but also to the corporation and its shareholders in taking this conservative approach" and that "[t]he primary objective of the drafters of the Virginia standard was to leave the conscientious director free to carry out his or her duties without being haunted by the image of the sheriff coming up the walk.").

44. *See, e.g.*, *WLR Foods*, 857 F. Supp. at 494; *WLR Foods*, 65 F.3d at 1186; Stand Up Digital, Inc. v. Hart, 838 F. App'x 733, 735 (4th Cir. 2020) (stating that under section 13.1-690, "the proper inquiry focuses on the subjective beliefs of the director and the director's use of a decision-making process that would produce a defensible business decision.") (internal citation omitted).

45. VA. CODE ANN. § 13.1-690(D) (2021).

46. *Id.* § 13.1-690(B).

federal or state securities law."[47] The "willful misconduct" exception is intended to be limited to intentional, knowing misconduct—i.e., the director or officer must have intentionally acted or failed to act and done so knowing that what he or she was doing was wrong.[48] The exceptions to exculpation are therefore narrower than those of the comparable Delaware statute,[49] which precludes exculpation not only for "intentional misconduct," but also for "acts or omissions not in good faith" and "any breach of the director's or officer's duty of loyalty to the corporation or its stockholders."[50]

Further, a Virginia corporation can provide a director or officer with indemnification against liability as well as advancement or reimbursement of defense expenses with the only exception being for indemnification in a case of "willful misconduct or a knowing violation of criminal law."[51] Those provisions provide considerable protection to directors and officers.[52]

Note further the favorable provisions in the Stock Act relating to derivative claims and derivative suits challenging decisions of the board. With the ever-increasing legal costs of judicial resolution of shareholder litigation, Virginia's statutory process for handling derivative claims is a huge benefit.[53] Section 13.1-672.1(B) requires the shareholder to make a demand on the corporation "without exception."[54] Unlike Delaware, there is no need for time-

47. *Id.* § 13.1-692.1 (2021). Several courts have rejected the argument that a willful act is limited to one that is intended to cause injury, finding, instead, that a failure to act knowing that the failure to act was wrongful was sufficient to constitute willful misconduct. *See In re* Land Am. Fin. Grp., Inc., 470 B.R. 759, 791–94, 806 (Bankr. E.D. Va. 2013); Quinn v. Knight, No. 3:16-cv-610, 2016 U.S. Dist. LEXIS 151346, at *12 (E.D. Va. 2016).

48. GOOLSBY & HAAS, *supra* note 11, at 272 ("The intent of the drafters was that each term should be construed literally. In the case of willful misconduct the perpetrator not only must have intentionally acted or failed to act, *but also must have done so knowing that what he or she was doing was wrong*. Similarly, to establish a 'knowing' violation of criminal law, it will be necessary to show that the defendant knew what action was being taken *and that the action being taken was a crime*.") (emphasis added).

49. *See id.* at 271 (stating that "[t]he willful misconduct and knowing violation exceptions to the safe harbor of the Virginia statute are narrower than those found in most states" and contrasting Delaware law).

50. *See* DEL. CODE ANN. tit. 8, § 102(b)(7)(i)–(ii) (2025).

51. VA. CODE ANN. § 13.1-704(C) (2021).

52. *See* GOOLSBY & HAAS, *supra* note 11, at 266 (discussing the willful misconduct and knowing violation standard for exculpation).

53. *Cf.* Dooley & Goldman, *supra* note 22, at 745. The MBCA also seeks to limit the number of issues involved in derivative proceedings. The most notable feature is the MBCA's elimination of the demand-required or demand-excused inquiry in favor of a universal demand requirement.

54. § 13.1-672.1(B) (Cum. Supp. 2026); Firestone v. Wiley, 485 F. Supp. 2d 694, 701 (E.D. Va. 2007).

consuming and costly litigation as to whether the demand is or is not excused. This also gives the board of directors the opportunity to review the demand and consider whether to take corrective action before costly litigation is initiated. More important, Code of Virginia section 13.1-672.4 provides that a court "shall dismiss[]" a derivative proceeding if disinterested directors on the board or on a board committee conduct an "adequately informed" review of the allegations in the demand, determine in "good faith" that the "maintenance of the derivative proceeding is not in the best interests of the corporation," and submit a "short and concise statement" to the court "of the reasons for its determination."[55]

Another significant benefit of being incorporated in the Commonwealth relates to shareholder access to the corporation's books and records. Helpful are (i) the statutory limitations on the types of books and records that are available for inspection, and (ii) the prerequisites that a shareholder must satisfy to have access to board minutes, financial records, and the list of shareholders. All shareholders are entitled to inspect the articles of incorporation, bylaws, minutes of shareholder meetings for the last three years, as well as communications to shareholders during that period, the names and business addresses of officers and directors, and the most recent annual report filed by the corporation with the State Corporation Commission.[56] In addition, a shareholder (i) who has been a shareholder for at least six months or is the holder of at least five percent of the voting shares and (ii) whose "demand is made in good faith and for a proper purpose" also is entitled to inspect (a) relevant excerpts of board and committee minutes, (b) work papers used in preparing the most recent annual financial statements, and (c) the list of the corporation's shareholders.[57]

Also important and unique is the role played by Virginia's State Corporation Commission and the office of the Clerk of the Commission. In other jurisdictions, major documents, including articles or certificates of incorporation, merger, domestication, conversion, and dissolution, must be filed with the secretary of state or equivalent agency to become effective. But there is no substantive

55. § 13.1-672.4 (Cum. Supp. 2026); *see also* Luzak v. Light, No. 1:15-cv-501, 2016 U.S. Dist. LEXIS 88992, at *9-11 (E.D. Va. July 8, 2016), *aff'd*, 678 F. App'x 180 (4th Cir. 2017).

56. §§ 13.1-770 to -771 (Cum. Supp. 2026 & 2021).

57. *Id.* §§ 13.1-771 to -772(C) (2021).

review of the filed documents.[58] In the Commonwealth, when any of those same documents are filed with the State Corporation Commission, the office of the Clerk of the Commission reviews the document for compliance with the provisions of the Stock Act before the State Corporation Commission will issue its certificate to make the document effective.[59] While that substantive review may at times be an inconvenience,[60] the benefits to the corporation that flow from that process are substantial. Code of Virginia section 13.1-614 provides that any petition by a shareholder to challenge any certificate issued by the Commission must be filed with the Commission within thirty days of the effective date of the certificate.[61] That section further provides that "[n]o court in or outside the Commonwealth . . . except the Supreme Court [of Virginia] by way of appeal . . . ha[s] jurisdiction to review, reverse, correct, or annul any action of the Commission within the scope of its authority" with respect to any certificate issued by the Commission.[62] In addition, section 13.1-614 provides that "[n]o court in or outside of the Commonwealth shall have jurisdiction to enjoin or delay the holding of any meeting of directors or shareholders for the purpose of authorizing . . . any amendment of the articles of incorporation, merger, share exchange, domestication, conversion [or] dissolution" except for failure to make the list of shareholders available as required by Code of Virginia section 13.1-661 or fraud.[63] We are not aware of any other jurisdiction that has anything resembling this section.

Overall, we believe that statutorily the Commonwealth can stand toe to toe with any other jurisdiction as an attractive state in which to incorporate in a relatively balanced and measured way. The most likely concern about incorporating in the Commonwealth

58. Amy Simmerman, David Berger & William Chandler III, *Delaware's Status as the Favored Corporate Home: Reflections and Considerations*, HARV. L. SCH. F. ON CORP. GOVERNANCE (May 8, 2024), https://corpgov.law.harvard.edu/2024/05/08/delawares-status-as-the-favored-corporate-home-reflections-and-considerations/ [https://perma.cc/MM7U-QKME] (observing that "Delaware reviews most filings only for the form of the filing and does not conduct substantive review").

59. § 13.1-605(A) (2021).

60. The office of the Clerk has a process for providing expedited review of a document. Use of that process is strongly recommended for time-sensitive filings or effective dates. § 12.1-21.2(C) (2021). *See generally Online Expedited Services*, STATE CORP. COMM'N, https://www.scc.virginia.gov/businesses/about-the-clerks-office/ [https://perma.cc/WR3T-UMCP].

61. § 13.1-614(A) (Cum. Supp. 2026).

62. *Id.* § 13.1-614(B).

63. *Id.*

is the absence of a business court to handle derivative proceedings and other business-related issues.[64] While many important provisions in the Stock Act are written with clarity and intended to avoid disputes, there may still be hesitation from some parties over the resolution of complex corporate litigation. Noteworthy in this regard is the fact that a majority of states now have a business litigation docket or a business court, including every jurisdiction that shares a border with the Commonwealth.

Change may be on the way. During the 2026 session of the Virginia General Assembly, legislation was introduced to provide for a business litigation docket within the existing structure of the Commonwealth's circuit court system.[65] Senate Bill 369 would authorize the Chief Justice of the Supreme Court of Virginia to designate no more than four current circuit court judges in different regions in the Commonwealth to preside over the docket. It would permit counsel to any party or the judge of the circuit court to petition the Chief Justice of the Supreme Court of Virginia to assign a case to the business court docket. The case must (i) have a minimum amount in controversy of $100,000, (ii) present special complexity, including specialized issues or acute litigation management issues, and fall into one or more of several enumerated categories of civil actions including corporate governance disputes, derivative proceedings, and merger or acquisition litigation.[66] Senate Bill 369 passed the Virginia Senate, but the Courts of Justice Committee of the House of Delegates carried the bill over to the 2027 Session of the Virginia General Assembly. The bill should be up for consideration by that House Committee in January 2027.

While we believe that, with few exceptions, Virginia courts have done an exemplary job applying the provisions of the Stock Act consistent with the General Assembly's intent, a statewide business litigation docket would be a valuable addition and, from a public relations standpoint, adoption of Senate Bill 369 or similar legislation would provide a strong additional argument for incorporating in the Commonwealth. Perhaps even more important, having a business court docket should be attractive to any corporation that has, or is considering engaging in, business in the Commonwealth

64. *See, e.g.*, Zohar Goshen & Tomer S. Stein, *Leaving Delaware? The Essential Role of Specialized Corporate Courts*, 125 COLUM. L. REV. 2077, 2113 (2025) (explaining the significance of business courts in adjudicating shareholder litigation).

65. *See* S.B. 369, Va. Gen. Assembly (Reg. Sess. 2026).

66. *Id.*

regardless of where it may be incorporated. We do note that with the substantive role played by the State Corporation Commission with respect to articles filed with the Commission, a separate business docket within the existing circuit court system should be sufficient, thereby avoiding the expense and complexity associated with establishing a separate business court.

Notwithstanding our favorable assessment of the Commonwealth as both a state in which to incorporate and, perhaps more important, a place to transact business, it seems appropriate to continue to evaluate whether additional changes to the Stock Act should be pursued. One point of focus should be provisions in the Model Act that Virginia still has not adopted. With the 2026 changes to the Stock Act, only the recently revised Model Act article on appraisal rights stands out.[67] While the recent Model Act changes relating to appraisal rights could have been included as a part of Virginia's 2026 legislative package, it was concluded that in light of the limited number of instances in which shareholders actually exercise appraisal rights, rushing to rewrite the article on appraisal rights did not make sense. While the Model Act revisions include multiple substantive changes to appraisal rights, none of them appeared critical relative to appraisal practices in Virginia. Going forward, it will be interesting to see whether other states that follow the Model Act elect to follow the Act's new appraisal rights article.

From a different perspective, with so much attention now being directed at which state is the best state in which to incorporate, it also is important to consider corporate code changes that other states have made in the last several years. While Virginia's 2026 revision followed Delaware's 2025 changes with respect to conflicting interest transactions involving directors or officers, similar changes that Delaware made that expressly address the liability of controlling stockholders may merit further consideration.[68] Over the years, transactions between a corporation and its controlling shareholder or controlling group of shareholders had become fertile areas for fiduciary duty litigation. In many cases, those transactions resulted in litigation or settlements at significant cost notwithstanding the seemingly inconsequential nature of some of

67. *See* Corporate Laws Committee, *Changes in the Model Business Corporation Act—Amendments Relating to Appraisal Rights (Sections 1.40 and 6.40 and Chapter 13)*, 80 BUS. LAW. 189, 190 (2024–2025).

68. *See* DEL. CODE ANN. tit. 8, § 144(b), (c), (d)(5) (2025).

those claims. With this background, further consideration of Delaware's amendments with respect to controlling stockholder transactions and liability is warranted. Providing a process for review by disinterested directors or shareholders would reduce the likelihood of costly litigation and provide greater certainty to controlling shareholders and transaction planners.[69]

Further consideration also might be given to provisions that Delaware included in its 2025 revision of Section 144 that add a presumption as to the disinterestedness of a director of a corporation with a class of stock listed on a national securities exchange if the director is not a party to the transaction and the board of directors has determined that the director is independent or that the director satisfies the exchange's criteria for determining independence.[70]

Several other recent Delaware changes provide the board of directors with increased flexibility. Section 147 of the Delaware General Corporation Law (the "DGCL") now permits a board of directors to approve any agreement that requires board approval even if non-substantive changes still need to be finalized.[71] In addition, Section 268 of the DGCL was amended to provide that, unless otherwise expressly provided for in an agreement of merger, disclosure schedules qualifying representations and warranties, covenants, and conditions are not deemed to be part of the agreement for purposes of the DGCL.[72] Those amendments were adopted in

69. While the 2026 revisions to section 13.1-691 may protect a director or officer in connection with a controlling shareholder transaction, the revisions did not address the liability of the controlling shareholder like the recent changes to section 144 of the DGCL. Also of note, the changes that Delaware made in 2025 with respect to stockholder access to books and records were significant. *See* DEL. CODE ANN. tit. 8, § 220 (2025). But even with those changes in place, Virginia's existing limitations on shareholder access to books and records arguably remain more protective than Delaware's revised provisions. *See* VA. CODE ANN. § 13.1-770 (Cum. Supp. 2026).

70. DEL. CODE ANN. tit. 8, § 144(d)(2) (2025) ("Any director of a corporation that has a class of stock listed on a national securities exchange shall be presumed to be a disinterested director with respect to an act or transaction to which such director is not a party if the board of directors shall have determined that such director satisfies the applicable criteria for determining director independence from the corporation and, if applicable with respect to the act or transaction . . . under the rules (and interpretations thereof) promulgated by such exchange . . . which presumption shall be heightened and may only be rebutted by substantial and particularized facts that such director has a material interest in such act or transaction or has a material relationship with a person with a material interest in such act or transaction.").

71. *Id.* § 147 (2025).

72. *Id.* § 268(b) (2025). *Compare id.* § 251(b) (2025) (providing that the board of directors must adopt a resolution approving an agreement of merger), *with* VA. CODE ANN. §§ 13.1-

response to a controversial decision denying a motion to dismiss a stockholder's claim that a board of directors did not properly approve a merger agreement in strict compliance with the DGCL's merger statute.[73] These types of changes, while not essential, should discourage hypertechnical legal challenges to transactions that, even though of limited substance, are time-consuming and costly to defend.[74] As defense costs have continued to escalate, claims of failure to satisfy immaterial technical requirements have in some cases led to settlements of consequence notwithstanding the immaterial nature of the claim.

With all of the attention that is being given to Texas as an attractive state in which to incorporate and to transact business, several changes to the TBOC that Texas recently made seem to be worthy of further consideration:

1. In connection with the creation of a board committee to approve conflicted interest transactions, Section 21.4161 of the TBOC now permits the corporation to obtain a court ruling that the directors appointed to the committee are independent and disinterested with respect to the transaction.[75] With such a determination in hand, it will be hard to challenge any decision that the committee may make. At the same time, it may be hard to justify the time, expense, and delay associated with seeking a court determination unless there is legitimate uncertainty as to the independence and disinterestedness of one or more committee members. There are also confidentiality considerations that may disfavor utilizing that statute since any judicial proceeding would become a matter of public record.

2. In a related change, Section 21.554 of the TBOC now permits a corporation that has appointed directors to consider a shareholder derivative claim to obtain a court ruling as to whether the directors are independent and disinterested as to the allegations

716(C) to -718(A) (2021) (requiring the board of directors to adopt a "plan of merger" which can be a component of or attachment to a longer merger agreement).

73. *See* AP-Fonden v. Activision Blizzard, Inc., 2024 Del. Ch. LEXIS 63, at *10–20 (Del. Ch. Feb. 29, 2024).

74. On this point, the Stock Act provisions giving finality to filings with the State Corporation Commission are particularly helpful and largely avoid the lingering uncertainty in Delaware over the validity of a merger transaction that could be challenged years after it is completed. *See* § 13.1-614(A) (Cum. Supp. 2026) (imposing a thirty-day period in which certain claims can be brought challenging the effectiveness of a certificate issued by the State Corporation Commission).

75. *See* TEX. BUS. ORGS. CODE ANN. § 21.4161(a) (2025).

made in the shareholder's demand.[76] The benefits and the burdens associated with a court determination of disinterestedness with respect to a conflicted interest transaction also apply with respect to a derivative claim.

3. For any Texas corporation whose common shares are listed on a national securities exchange or that has at least 500 shareholders and has elected to be governed by newly codified business judgment rules contained in TBOC section 21.419, Texas now permits inclusion in the certificate of formation or bylaws of a provision establishing a minimum ownership threshold to institute a derivative proceeding.[77] The threshold cannot exceed 3% of the corporation's outstanding shares.[78] The costs and time that can be incurred in responding to a derivative demand by a shareholder with only a nominal ownership interest are legitimate concerns.

We believe that in today's high-profile environment the Commonwealth should continue to explore changes in order to be an attractive option in which to incorporate and transact business. As time passes, it will be helpful to see whether other states adopt any or all of these suggested changes.[79] Finally, in this rapidly changing environment, we urge the leadership in the Commonwealth not to rest on its record as a great place to transact business. Most important, we hope that the Virginia General Assembly will adopt legislation providing for a business court docket within the Commonwealth's circuit court system, and we would urge that the Virginia Chamber of Commerce and the Virginia Bar Association support that change.

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76. *Id.* § 21.554. The previously noted changes that Delaware made in Section 144 to provide a presumption as to the disinterestedness of a director seem like a more attractive option.

77. *Id.* § 21.552. Texas now also authorizes a publicly traded Texas corporation that has its principal office in Texas or whose shares are admitted to trading on a stock exchange that has its principal office in Texas to include a provision in its governing documents that prohibits a shareholder from submitting a proposal for shareholder approval unless the shareholder holds at least $1 million in market value of voting shares or 3% of the corporation's voting shares. *Id.* § 21.373.

78. *Id.* § 21.552.

79. *See, e.g.*, Scott N. Sherman, Edgar A. Neely IV, & Niki Patel, *Georgia Adopts Significant, Business-Friendly Corporate Governance and Shareholder Litigation Reforms*, THE NAT'L L. REV. (May 20, 2026), https://natlawreview.com/article/georgia-adopts-significant-business-friendly-corporate-governance-and-shareholder [https://perma.cc/38Q5-PEMZ] (discussing recent changes to Georgia's corporate governance and shareholder litigation laws).

## II. THE NONSTOCK CORPORATION ACT

During its 2026 session, the Virginia General Assembly also adopted a comprehensive revision of the Nonstock Act. Notwithstanding that approximately 60,000 nonstock corporations currently are incorporated in the Commonwealth,[80] it is a challenge to find any discussion about the Nonstock Act's various provisions.

To fill that vacuum, a brief review of the history of the Nonstock Act may be helpful. In the mid-1950s, when the Committee on Corporate Laws of the Business Law Section of the American Bar Association published the initial version of the Model Act, it also published the first version of the Model Nonprofit Corporation Act (the "Nonprofit Act"). Shortly thereafter, in 1956, Virginia adopted the Nonstock Act, relying primarily on the provisions in the Nonprofit Act, with the big difference being Virginia's election to cover nonstock entities regardless of whether they qualified as nonprofit.[81] As a result, a wide variety of entities have the option to incorporate as Virginia nonstock corporations. Examples include business and professional associations, community associations, and homeowners associations.

In the first half of the 1980s, substantial revisions were made to the Nonstock Act at the same time that the Commonwealth adopted the first major revision of the Stock Act.[82] As further changes were made to the Stock Act over the years, in some cases conforming changes were made to the Nonstock Act, but a number of conforming changes were not made. More specifically, when the second major revision to the Model Act was adopted in 2016, Virginia followed suit with respect to the Stock Act, but conforming changes to the Nonstock Act were not included. One of the major benefits of the 2026 revisions to the Nonstock Act will be the elimination of unintended discrepancies between the Stock Act and the Nonstock Act.

Before reviewing the principal 2026 changes to the Nonstock Act, it seems important to highlight the provisions that have served as the foundation of the Act since at least 1985. As with the

80. 123rd Annual Report, *supra* note 2, at 753.

81. *See* George D. Gibson, *The Virginia Corporation Law of 1956*, 42 VA. L. REV. 445, 450 (1956).

82. *See* REPORT OF THE VIRGINIA CODE COMM'N ON THE REVISION OF CHAPTERS 1 AND 2 OF TITLE 13.1 OF THE CODE OF VIRGINIA, H. Doc. No. 13, at 3, 5 (1985).

Stock Act, the bedrock concept is the Act's director-centric form of governance. Code of Virginia section 13.1-853 states that all corporate powers

> shall be exercised by or under the authority of the board of directors, and the business and affairs of the corporation shall be managed under the direction and subject to the oversight of the board of directors, subject to any limitation . . . in the articles of incorporation or in an agreement [among members or directors] authorized by § 13.1-852.1.[83]

Note the important 2026 addition of the directors' oversight role. With the ever-increasing need for, and complexity of, internal controls and procedures for boards to monitor a corporation's legal compliance, that oversight role has become a key responsibility.

For many nonstock corporations the role of the board of directors is more comprehensive than in the case of a stock corporation. While the shareholders of stock corporations have significant voting rights, for many nonstock corporations the board of directors is the sole decision maker. The Nonstock Act does not require that a nonstock corporation have members.[84] It also provides that members of a nonstock corporation do not have voting rights except as provided in the articles of incorporation or bylaws.[85] As a result, many nonstock corporations have self-perpetuating boards of directors.

In tandem with the director-centric model, the Nonstock Act mirrors the Stock Act in providing a statutory pro-director standard of conduct. It requires every director to discharge his or her duties in accordance with his or her "good faith business judgment of the best interests of the corporation."[86] Any person alleging a violation of this standard has the burden of proving the violation.[87] Code of Virginia section 13.1-870 also expressly authorizes a director to rely on officers or other employees, outside advisors, and a committee of the board of directors of which the director is not a member, in each case unless the director has knowledge or information that makes reliance unwarranted.[88]

83. VA. CODE ANN. § 13.1-853(B) (Cum. Supp. 2026).
84. *Id.* § 13.1-837 (Cum. Supp. 2026).
85. *Id.*
86. *Id.* § 13.1-870(A) (Cum. Supp. 2026).
87. *Id.* § 13.1-870(D).
88. *Id.* § 13.1-870(B).

As with the Stock Act, the Nonstock Act authorizes a provision in the articles of incorporation or the bylaws that protects directors and officers against liability for money damages in claims by the corporation or its members, with the only exception being in the case of willful misconduct or a knowing violation of criminal law.[89] Code of Virginia section 13.1-883(B) also authorizes a nonstock corporation to provide directors and officers indemnification against liability, as well as advancement or reimbursement of defense costs, except in a case of willful misconduct or a knowing violation of criminal law.[90]

With this brief overview of the Nonstock Act, we turn to a review of the major changes effected in the 2026 revision. As previously noted, many 2026 revisions bring provisions in the Nonstock Act in line with provisions in the Stock Act. Other 2026 changes were triggered by a review of the current version of the American Bar Association's Model Nonprofit Act. A third block of changes enables a nonstock corporation to use its bylaws, and not just its articles of incorporation, to tailor its structure and rules of operation to its specific needs. Throughout the revised Nonstock Act, changes were made to permit increased reliance on a provision in the bylaws in recognition that for many smaller nonstock corporations, the members and the board of directors typically look to the bylaws for guidance, often having little, if any, familiarity with the articles of incorporation.

With this background, the following is a summary of the principal 2026 changes in the Nonstock Act. Note that the effective date of all of these changes has been delayed from July 1, 2026, to January 1, 2027, to provide the office of the Clerk of the State Corporation Commission sufficient time to modify the Commission's various forms to conform to the revised Nonstock Act.[91] The summary addresses the principal changes in the order in which they appear in the Nonstock Act, rather than in any order of significance.

1. Article 1.1 has been added to the Nonstock Act to permit a nonstock corporation to correct defective corporate action long after the defective corporate action occurred. The new article

89. *Id.* § 13.1-870.1(A), (C) (Cum. Supp. 2026). The Code provides the same protection for directors and officers of nonprofit corporations even if there is no such provision in the articles of incorporation or bylaws. *Id.* § 13.1-870.1(B).

90. *Id.* § 13.1-883(B) (Cum Supp. 2026).

91. *See* S.B. 246, Va. Gen. Assembly (Reg. Sess. 2026).

parallels provisions recently added to the Stock Act.[92] As is the case with stock corporations, the addition of the article is especially helpful for Virginia corporations in light of the thirty-day time period that the Nonstock Act otherwise provides for challenges relating to defective corporate action with respect to any articles that the corporation has filed with the State Corporation Commission and that have been certified by the Commission.[93]

2. Code of Virginia section 13.1-819 has been amended to authorize inclusion of a provision in a nonstock corporation's articles of incorporation limiting or eliminating any duty of any director or any other person to offer to the corporation one or more categories of business opportunities. This addition is consistent with section 13.1-619(B) of the Stock Act.

3. Code of Virginia section 13.1-823 has been amended to authorize inclusion in the bylaws of a provision designating a court or courts as exclusive forums for internal corporate claims against the nonstock corporation. The revised section closely follows section 13.1-624(C) of the Stock Act. With so little litigation involving nonstock corporations, adoption of an exclusive forum provision may seem unnecessary. At the same time, there is no apparent downside to including such a provision in the bylaws.

4. In an effort to accommodate the wide variety of entities that might elect to become nonstock corporations, Code of Virginia section 13.1-837 was amended to authorize (i) inclusion of a provision in the articles of incorporation or the bylaws permitting the transfer of membership interests in the corporation, (ii) admission of members for consideration unless otherwise provided in the articles of incorporation or the bylaws, and (iii) inclusion in the articles of incorporation or the bylaws of a provision for the payment of dividends and other distributions to the corporation's members.[94] Closely related to these changes, new Code of Virginia sections 13.1-837.1 and 13.1-837.2 authorize provisions in the articles of incorporation or the bylaws for (i) the imposition of dues, fees and

92. *See* §§ 13.1-614.3, -614.6 (2021).

93. Code of Virginia section 13.1-813 places a thirty-day limit on the power of the State Corporation Commission to grant a hearing with respect to any articles that have been certified by the Commission, and only the Supreme Court of Virginia has authority to review any action of the Commission. *Id.* § 13.1-813(A)–(B) (Cum. Supp. 2026).

94. In the case of a charitable corporation, a dividend or other distribution may only be made to another charitable corporation that is a member or has the power to appoint one or more of the corporation's directors. *Id.* § 13.1-837(B)–(C), (E) (Cum. Supp. 2026).

assessments on members and (ii) the suspension or termination of a member. The extended authorizations provided by these sections may make incorporation as a nonstock corporation a more attractive option, especially for entities that are organized for profit. Note in this regard that prior to the 2026 revisions, section 13.1-814 of the Nonstock Act expressly prohibited the payment of dividends to members.

5. Conforming to a similar provision in section 13.1-669.1 of the Stock Act, a new Code of Virginia section 13.1-852.01 of the Nonstock Act gives a court authorization to review the votes cast at a meeting of the members and to review a variety of issues relating to the election, appointment or removal of a director or officer.

6. A new Article 7.2 has been added to the Nonstock Act to authorize and provide for members to bring derivative claims on behalf of a nonstock corporation. The provisions in Article 7.2 mirror the provisions of the Stock Act.[95] As noted above, while litigation is infrequent with respect to nonstock corporations, it makes sense to have a proper mechanism in place for handling any claim that may be made by a member on behalf of the corporation.

7. Consistent with the Stock Act,[96] Code of Virginia section 13.1-854 has been amended to permit the adoption of qualifications for any director or any nominee for director and to address the effective time of any qualifications for directors or nominees for directors.

8. Also consistent with the Stock Act,[97] Code of Virginia section 13.1-855 has been amended to delete the priority given to a bylaw provision relating to the number and election of directors over a similar provision in the articles of incorporation.

9. Code of Virginia section 13.1-857 has been amended to provide for ex officio directors. Note also that section 13.1-857(F) now provides that ex-officio directors are voting directors unless the articles of incorporation or bylaws provide otherwise. For many nonstock corporations, it has been standard practice to include one or more officers as ex-officio directors, but the Nonstock Act was silent as to whether an ex-officio director had voting rights. Any corporation that has had one or more ex-officio directors without

95. *See id.* §§ 13.1-672.1 to -672.5, -852.3 to -852.7 (2021 & Cum. Supp. 2026).
96. *See id.* § 13.1-674 (2021).
97. *See id.* § 13.1-675(A)–(C) (2021).

voting rights and wants to continue that practice will need to add to its articles or bylaws a provision denying voting rights for any ex-officio director.

10. Code of Virginia section 13.1-861.1 has been added to permit a court to remove a director if (i) the director engaged in fraudulent conduct with respect to the corporation or its members, grossly abused the position of director or intentionally inflicted harm on the corporation, and (ii) considering the inadequacy of other remedies, removal would be in the corporation's best interest. While reliance on this provision will be rare, there can be situations in which the director in question has sufficient control of the corporation that judicial intervention is necessary.

11. Now that the Nonstock Act expressly authorizes a nonstock corporation to pay dividends and make other distributions to members, Code of Virginia section 13.1-871.2 has been added to provide for director liability for any dividend or other distribution made when the corporation was insolvent or would be made insolvent.

12. Consistent with the Stock Act,[98] Code of Virginia section 13.1-873 has been amended to add a provision authorizing an officer to rely in specified circumstances on the performance of other employees and on information provided by other employees and by advisors to the corporation. This provision also is consistent with section 13.1-870, which provides similar authorization for reliance by a director.

13. Code of Virginia section 13.1-887 has been amended to provide for corporations with multiple classes of members an enumerated list of amendments of the articles of incorporation that require a class vote to be adopted.

14. While there have not been many instances in which nonstock corporations were involved in extraordinary transactions, including mergers, interest exchanges, domestications and conversions, they can be expected to occur from time to time, and there does not appear to be any reason not to provide for them in the Nonstock Act. In the 2026 revision, Article 11 on mergers has been amended to provide also for interest exchanges. Article 11.1 has been conformed to the Stock Act to provide for redomestication of domestic nonstock corporations and foreign nonstock corporations. Article 11.2 now provides for conversions of foreign eligible entities and

98. *See id.* § 13.1-694(B) (2021).

Virginia eligible entities into Virginia nonstock corporations and for a Virginia nonstock corporation to become a Virginia or foreign eligible entity. The 2026 revision conforms the conversion provisions to those in the Stock Act.[99] The more limited existing provisions on conversions (Code of Virginia sections 13.1-944.1 to 13.1-944.7) were deleted.

15. Code of Virginia sections 13.1-899 and 13.1-900 have been amended to define the situations in which a disposition of the corporation's assets requires the approval of the corporation's members. The threshold to avoid the need for member approval (retention of at least thirty-three percent of the corporation's assets) has been taken from the Model Nonprofit Act.[100]

16. Title 13.1 has been amended to ensure that in any fundamental transaction involving a charitable corporation, the assets of the charitable corporation continue to be used for charitable purposes. A fundamental transaction includes an amendment of the articles of incorporation or the bylaws, a merger, an interest exchange, a domestication, a conversion, a sale of assets requiring member approval, or a dissolution.[101] The article also confirms the authority of the Attorney General of the Commonwealth with respect to any disposition of assets of a charitable corporation.

17. Significant changes were made to Code of Virginia sections 13.1-932 and 13.1-933 relating to the records that a nonstock corporation is required to maintain and the access that members have to those records. The amendments to those sections, which were taken from the Stock Act, (i) clarify that a member's access to accounting records only extends to records associated with the preparation of the corporation's financial statements and (ii) make clear that the corporation's obligation to maintain a record of its current members does not include the electronic mail address or other electronic contact information of any member.[102]

Section 13.1-933 was amended to (i) require that a member's demand to inspect corporate records be made at least 10 business days before the inspection date, (ii) make clear that access to accounting records is limited to ledgers and related work papers used in the preparation of the corporation's most recent annual financial

99. *See id.* §§ 13.1-722.8 to -722.13, -898.8 to -898.14 (2021 & Cum. Supp. 2026).
100. MODEL NONPROFIT CORP. ACT § 1001(a) (A.B.A. 2022).
101. *See* § 13.1-803 (Cum. Supp. 2026).
102. *See id.* §§ 13.1-770(C), -771(C)(2), -932(C), -933(B)(2) (2021 & Cum. Supp. 2026).

statements, and (iii) confirm that the corporation may enforce reasonable restrictions on the confidentiality, use or distribution of any records provided. In addition, a new subsection prohibits the use of any list of members for any purpose unrelated to the member's interest as a member, including (i) use to raise money or property unless the money or property will be used to solicit votes of members in an election held by the corporation, (ii) use for any commercial purpose and (iii) use for sale or purchase by any person.[103]

In a related change, section 13.1-933 was amended to clarify the power of a court, as a matter of common law and independently of the Nonstock Act, to order the production of corporate records.[104] Following in the footsteps of a similar recent change to the Stock Act,[105] section 13.1-933(F)(2) now provides that a court may order production of records, if (i) the member has been a member for at least six months and the member's demand is made in good faith and for a proper purpose, (ii) the requested records are material to the protection of the member's rights as a member and (iii) disclosure of the records will not adversely affect the corporation's interest.

18. In an important change, Code of Virginia section 13.1-935.2 has been added to provide for member access to a nonstock corporation's most recent annual financial statements.

19. Except for provisions in Code of Virginia sections 13.1-898.5:1(A)(5) and 13.1-898.14(A)(7), the revised Nonstock Act does not say anything about appraisal rights notwithstanding that section 1204 of the Model Nonprofit Act provides for appraisal rights of domestic nonstock corporations other than nonprofit corporations. Notwithstanding the absence of any statutory reference to appraisal rights, a nonstock corporation that is not a charitable corporation should be able to provide those rights by contract.

The 2026 revisions should provide nonstock corporations with more flexibility as well as clarity. Also important, with limited exceptions, the 2026 revisions are not expected to require nonstock corporations to make major changes in their governing documents. At the same time, the boards of directors of nonstock corporations

103. *See* MODEL NONPROFIT CORP. ACT § 406 (A.B.A. 2022).

104. § 13.1-933(F)(2) (Cum. Supp. 2026); *see* Respess v. VMI Alumni Ass'n, 81 Va. App. 141, 163, 902 S.E.2d 105, 116 (2024).

105. § 13.1-771(G)(2) (2021).

may want to review their articles of incorporation and bylaws, focusing on whether changes may be appropriate to take advantage of one or more of the many 2026 revisions to the Nonstock Act.

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