

# HOUSE BILL 728

C1

8lr1486

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By: ~~Delegates Feldman and Hammen~~, **Hammen, Krysiak, and McHale**

Introduced and read first time: February 4, 2008

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 15, 2008

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Corporations – Objecting Stockholders – Right to Fair Value of Stock**

3 FOR the purpose of altering the circumstances under which a stockholder of a  
4 Maryland corporation who objects to certain transactions may demand and  
5 receive the fair value of the stockholder’s stock; authorizing a stockholder to  
6 demand the fair value of stock listed on a national securities exchange under  
7 certain circumstances; repealing obsolete references to certain securities  
8 quotations systems; altering the definition of “beneficial owner” under the  
9 Maryland Business Combination Act to exclude, under certain circumstances, a  
10 person that holds a revocable proxy from a stockholder; defining certain terms;  
11 making certain stylistic and conforming changes; and generally relating to  
12 rights of objecting stockholders.

13 BY repealing and reenacting, with amendments,  
14 Article – Corporations and Associations  
15 Section 3–201, 3–202(c), and 3–601(d)  
16 Annotated Code of Maryland  
17 (2007 Replacement Volume)

18 BY adding to  
19 Article – Corporations and Associations  
20 Section 3–202(d) and (e)  
21 Annotated Code of Maryland  
22 (2007 Replacement Volume)

23 BY repealing and reenacting, without amendments,

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Corporations and Associations  
2 Section 3–601(a)  
3 Annotated Code of Maryland  
4 (2007 Replacement Volume)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Corporations and Associations**

8 3–201.

9 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
10 INDICATED.

11 (B) “AFFILIATE” HAS THE MEANING STATED IN § 3–601 OF THIS TITLE.

12 (C) “ASSOCIATE” HAS THE MEANING STATED IN § 3–601 OF THIS TITLE.

13 (D) “BENEFICIAL OWNER”, WHEN USED WITH RESPECT TO ANY VOTING  
14 STOCK, MEANS A PERSON THAT:

15 (1) INDIVIDUALLY OR WITH ANY OF ITS AFFILIATES OR  
16 ASSOCIATES, BENEFICIALLY OWNS VOTING STOCK, DIRECTLY OR INDIRECTLY;

17 (2) INDIVIDUALLY OR WITH ANY OF ITS AFFILIATES OR  
18 ASSOCIATES, HAS:

19 (I) THE RIGHT TO ACQUIRE VOTING STOCK (WHETHER THE  
20 RIGHT IS EXERCISABLE IMMEDIATELY OR WITHIN 60 DAYS AFTER THE DATE ON  
21 WHICH BENEFICIAL OWNERSHIP IS DETERMINED), IN ACCORDANCE WITH ANY  
22 AGREEMENT, ARRANGEMENT, OR UNDERSTANDING, ON THE EXERCISE OF  
23 CONVERSION RIGHTS, EXCHANGE RIGHTS, WARRANTS, OR OPTIONS, OR  
24 OTHERWISE; OR

25 (II) EXCEPT SOLELY BY VIRTUE OF A REVOCABLE PROXY,  
26 THE RIGHT TO VOTE VOTING STOCK IN ACCORDANCE WITH ANY AGREEMENT,  
27 ARRANGEMENT, OR UNDERSTANDING; OR

28 (3) EXCEPT SOLELY BY VIRTUE OF A REVOCABLE PROXY, HAS ANY  
29 AGREEMENT, ARRANGEMENT, OR UNDERSTANDING FOR THE PURPOSE OF  
30 ACQUIRING, HOLDING, VOTING, OR DISPOSING OF VOTING STOCK WITH ANY  
31 OTHER PERSON THAT BENEFICIALLY OWNS, OR THE AFFILIATES OR ASSOCIATES  
32 OF WHICH BENEFICIALLY OWN, DIRECTLY OR INDIRECTLY, THE VOTING STOCK.

1           **(E) “EXECUTIVE OFFICER” MEANS A CORPORATION’S PRESIDENT, ANY**  
2 **VICE PRESIDENT IN CHARGE OF A PRINCIPAL BUSINESS UNIT, DIVISION, OR**  
3 **FUNCTION, SUCH AS SALES, ADMINISTRATION, OR FINANCE, ANY OTHER**  
4 **PERSON WHO PERFORMS A POLICY MAKING FUNCTION FOR THE CORPORATION,**  
5 **OR ANY EXECUTIVE OFFICER OF A SUBSIDIARY OF THE CORPORATION WHO**  
6 **PERFORMS A POLICY MAKING FUNCTION FOR THE CORPORATION.**

7           **[(a)] (F) (1) [In this subsection,] “SUCCESSOR”,** except [as provided in  
8 subsection (b) of this section, “successor”] **WHEN USED WITH RESPECT TO A SHARE**  
9 **EXCHANGE,** includes a corporation which amends its charter in a way which alters  
10 the contract rights, as expressly set forth in the charter, of any outstanding stock,  
11 unless the right to do so is reserved by the charter of the corporation.

12           **[(b)] (2) [When] “SUCCESSOR”, WHEN used with [reference] RESPECT to**  
13 **a share exchange, [“successor”] means the corporation the stock of which was acquired**  
14 **in the share exchange.**

15           **(G) “VOTING STOCK” HAS THE MEANING STATED IN § 3-601 OF THIS**  
16 **TITLE.**

17 3-202.

18           (c) Unless the transaction is governed by § 3-602 of this title or is exempted  
19 by § 3-603(b) of this title, a stockholder may not demand the fair value of the  
20 stockholder’s stock and is bound by the terms of the transaction if:

21           (1) **[The] EXCEPT AS ~~OTHERWISE~~ PROVIDED IN SUBSECTION (D)**  
22 **OF THIS SECTION, ANY SHARES OF THE CLASS OR SERIES OF THE stock [is] ARE**  
23 **listed on a national securities exchange[, is designated as a national market system**  
24 **security on an interdealer quotation system by the National Association of Securities**  
25 **Dealers, Inc., or is designated for trading on the NASDAQ Small Cap Market]:**

26                   (i) With respect to a merger under § 3-106 of this title of a 90  
27 percent or more owned subsidiary with or into its parent corporation, on the date  
28 notice is given or waived under § 3-106 of this title; or

29                   (ii) With respect to any other transaction, on the record date for  
30 determining stockholders entitled to vote on the transaction objected to;

31           (2) The stock is that of the successor in a merger, unless:

32                   (i) The merger alters the contract rights of the stock as  
33 expressly set forth in the charter, and the charter does not reserve the right to do so;  
34 or

1 (ii) The stock is to be changed or converted in whole or in part in  
2 the merger into something other than either stock in the successor or cash, scrip, or  
3 other rights or interests arising out of provisions for the treatment of fractional shares  
4 of stock in the successor;

5 (3) The stock is not entitled, other than solely because of § 3-106 of  
6 this title, to be voted on the transaction or the stockholder did not own the shares of  
7 stock on the record date for determining stockholders entitled to vote on the  
8 transaction;

9 (4) The charter provides that the holders of the stock are not entitled  
10 to exercise the rights of an objecting stockholder under this subtitle; or

11 (5) The stock is that of an open-end investment company registered  
12 with the Securities and Exchange Commission under the Investment Company Act of  
13 1940 and the value placed on the stock in the transaction is its net asset value.

14 **(D) WITH RESPECT TO A MERGER, CONSOLIDATION, OR SHARE**  
15 **EXCHANGE, A STOCKHOLDER OF A MARYLAND CORPORATION WHO OTHERWISE**  
16 **WOULD BE BOUND BY THE TERMS OF THE TRANSACTION UNDER SUBSECTION**  
17 **(C)(1) OF THIS SECTION MAY DEMAND THE FAIR VALUE OF THE STOCKHOLDER'S**  
18 **STOCK IF:**

19 **(1) IN THE TRANSACTION, STOCK OF THE CORPORATION IS**  
20 **REQUIRED TO BE CONVERTED INTO OR EXCHANGED FOR ANYTHING OF VALUE**  
21 **EXCEPT:**

22 **(I) STOCK OF THE CORPORATION SURVIVING OR**  
23 **RESULTING FROM THE MERGER, CONSOLIDATION, OR SHARE EXCHANGE, STOCK**  
24 **OF ANY OTHER CORPORATION, OR DEPOSITARY RECEIPTS FOR ANY STOCK**  
25 **DESCRIBED IN THIS ITEM;**

26 **(II) CASH IN LIEU OF FRACTIONAL SHARES OF STOCK OR**  
27 **FRACTIONAL DEPOSITARY RECEIPTS DESCRIBED IN ITEM (I) OF THIS ITEM; OR**

28 **(III) ANY COMBINATION OF THE STOCK, DEPOSITARY**  
29 **RECEIPTS, AND CASH IN LIEU OF FRACTIONAL SHARES OR FRACTIONAL**  
30 **DEPOSITARY RECEIPTS DESCRIBED IN ITEMS (I) AND (II) OF THIS ITEM;**

31 **(2) THE DIRECTORS AND EXECUTIVE OFFICERS OF THE**  
32 **CORPORATION WERE THE BENEFICIAL OWNERS, IN THE AGGREGATE, OF 5**  
33 **PERCENT OR MORE OF THE OUTSTANDING VOTING STOCK OF THE**  
34 **CORPORATION AT ANY TIME WITHIN THE 1-YEAR PERIOD ENDING ON:**

35 **(I) THE DAY THE STOCKHOLDERS VOTED ON THE**  
36 **TRANSACTION OBJECTED TO; OR**

1                   (ii) **WITH RESPECT TO A MERGER UNDER § 3-106 OF THIS**  
2 **TITLE, THE EFFECTIVE DATE OF THE MERGER; AND**

3                   (3) **UNLESS THE STOCK IS HELD IN ACCORDANCE WITH A**  
4 **COMPENSATORY PLAN OR ARRANGEMENT APPROVED BY THE BOARD OF**  
5 **DIRECTORS OF THE CORPORATION AND THE TREATMENT OF THE STOCK IN THE**  
6 **TRANSACTION IS APPROVED BY THE BOARD OF DIRECTORS OF THE**  
7 **CORPORATION, ANY STOCK HELD BY PERSONS DESCRIBED IN ITEM (2) OF THIS**  
8 **SUBSECTION, AS PART OF OR IN CONNECTION WITH THE TRANSACTION AND**  
9 **WITHIN THE 1-YEAR PERIOD DESCRIBED IN ITEM (2) OF THIS SUBSECTION, WILL**  
10 **BE OR WAS CONVERTED INTO OR EXCHANGED FOR STOCK OF A PERSON, OR AN**  
11 **AFFILIATE OF A PERSON, WHO IS A PARTY TO THE TRANSACTION ON TERMS**  
12 **THAT ARE NOT AVAILABLE TO ALL HOLDERS OF STOCK OF THE SAME CLASS OR**  
13 **SERIES.**

14                   (e) **IF DIRECTORS OR EXECUTIVE OFFICERS OF THE CORPORATION ARE**  
15 **BENEFICIAL OWNERS OF STOCK IN ACCORDANCE WITH § 3-201(D)(2)(I) OF THIS**  
16 **SUBTITLE, THE STOCK IS CONSIDERED OUTSTANDING FOR PURPOSES OF**  
17 **DETERMINING BENEFICIAL OWNERSHIP BY A PERSON UNDER SUBSECTION**  
18 **(D)(2) OF THIS SECTION.**

19 3-601.

20                   (a) In this subtitle the following words have the meanings indicated.

21                   (d) “Beneficial owner”, when used with respect to any voting stock, means a  
22 person **THAT:**

23                   (1) [That, individually] **INDIVIDUALLY** or with any of its affiliates or  
24 associates, beneficially owns voting stock, directly or indirectly; [or]

25                   (2) [That, individually] **INDIVIDUALLY** or with any of its affiliates or  
26 associates, has:

27                   (i) The right to acquire voting stock (whether [such] **THE** right  
28 is exercisable immediately or only after the passage of time), [pursuant to] **IN**  
29 **ACCORDANCE WITH** any agreement, arrangement, or understanding [or upon], **ON**  
30 the exercise of conversion rights, exchange rights, [warrants] **WARRANTS**, or options,  
31 or otherwise; or

32                   (ii) [The] **EXCEPT SOLELY BY VIRTUE OF A REVOCABLE**  
33 **PROXY, THE** right to vote voting stock [pursuant to] **IN ACCORDANCE WITH** any  
34 agreement, arrangement, or understanding; or

1                   (3)    [That] **EXCEPT SOLELY BY VIRTUE OF A REVOCABLE PROXY,**  
 2 has any agreement, arrangement, or understanding for the purpose of acquiring,  
 3 holding, voting, or disposing of voting stock with any other person that beneficially  
 4 owns, or [whose] **THE** affiliates or associates **OF WHICH** beneficially own, directly or  
 5 indirectly, [such shares of] **THE** voting stock.

6                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
 7 June 1, 2008.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.