

SENATE BILL 622

C1

3lr1844
CF HB 702

By: **Senator Raskin**

Introduced and read first time: February 1, 2013

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 2013

CHAPTER _____

1 AN ACT concerning

2 **Corporations and Associations – Document Filing and Processing**

3 FOR the purpose of altering the definition of “electronic transmission”, for purposes of
4 provisions of law governing business entities, to clarify that it includes
5 electronic mail, facsimile transmission, and Internet transmission; clarifying
6 the authority of the State Department of Assessments and Taxation to accept
7 documents that are filed for record by electronic transmission; repealing certain
8 obsolete provisions of law relating to filing documents by means of a facsimile
9 device; authorizing the Department, under certain circumstances, to accept
10 certain documents or drafts of certain documents for ~~approval~~ review of the
11 documents’ sufficiency before the documents are filed with the Department;
12 authorizing the Department to adopt regulations to administer the preclearance
13 process; establishing a certain processing fee for preclearance of certain
14 documents and drafts of certain documents; requiring the fees collected to be
15 credited to a certain fund; establishing a certain fee for processing certain
16 documents on a certain expedited basis; requiring the Department, under
17 certain circumstances, to process certain documents within a certain period of
18 time after the documents are received; requiring an entity to take certain
19 actions if the Department waives the requirement that the written consent of
20 the entity’s resident agent must be filed with the Department; establishing
21 when a certain consent shall be effective; making certain stylistic, conforming,
22 and clarifying changes; defining certain terms; repealing a certain definition;
23 providing for the construction of this Act; and generally relating to filing and
24 processing business entity documents.

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 BY repealing and reenacting, with amendments,
2 Article – Corporations and Associations
3 Section 1–101, 1–201, 1–203, 1–203.2, and 1–208
4 Annotated Code of Maryland
5 (2007 Replacement Volume and 2012 Supplement)

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

8 **Article – Corporations and Associations**

9 1–101.

10 (a) In this article, unless the context clearly requires otherwise, the following
11 words have the meanings indicated.

12 (b) “Address” means the post office address, and includes street and number,
13 if any, county or municipal area, and state and, if outside the United States, country.

14 (c) “Articles of transfer” means articles of sale, articles of lease, articles of
15 asset exchange, or articles of transfer.

16 (d) “Assets” means any tangible, intangible, real, or personal property or
17 other assets, including goodwill and franchises.

18 (e) “Business trust” means an unincorporated trust or association, including
19 a common-law trust, a Massachusetts trust, a real estate investment trust as defined
20 in § 8–101 of this article, a statutory trust as defined in § 12–101 of this article, and a
21 foreign statutory trust as defined in § 12–101 of this article, that is engaged in
22 business and in which property is acquired, held, managed, administered, controlled,
23 invested, or disposed of by trustees or the trust for the benefit and profit of any person
24 who may become a holder of a transferable unit of beneficial interest in the trust.

25 (f) (1) “Charter” includes:

26 (i) A charter granted by special act of the General Assembly;

27 (ii) Articles or certificate of incorporation;

28 (iii) Amended articles or certificate of incorporation;

29 (iv) Articles of restatement, if approved as described in § 2–609
30 of this article;

31 (v) Articles of amendment and restatement; and

32 (vi) Articles or agreements of consolidation.

1 (2) “Charter” includes the documents referred to in paragraph (1) of
2 this subsection, either as:

3 (i) Originally passed or accepted for record; or

4 (ii) As amended, corrected, or supplemented by special act of the
5 General Assembly, articles of amendment, articles of amendment and reduction,
6 articles of extension, articles supplementary, articles or agreements of merger, articles
7 of revival, or a certificate of correction.

8 (g) “Charter document” means any:

9 (1) Document enumerated in subsection (f) of this section; and

10 (2) Articles of reduction, articles or agreements of transfer, articles of
11 merger, articles of share exchange, articles of dissolution, and stock issuance
12 statements.

13 (h) “Clerk of the court” means clerk of the circuit court for any county.

14 (i) “Convertible securities” includes:

15 (1) Shares of stock which by their terms are convertible into shares of
16 stock of one or more classes; and

17 (2) Obligations which by their terms are convertible into shares of
18 stock of one or more classes.

19 (j) “County” includes Baltimore City.

20 (k) “Department” means the State Department of Assessments and Taxation.

21 (l) “Director” means a member of the governing body of a corporation,
22 whether designated as a director, trustee, or manager or by any other title.

23 (m) **(1)** “Electronic transmission” means any form of communication, not
24 directly involving the physical transmission of paper, that creates a record that:

25 **[(1)] (I)** May be retained, retrieved, and reviewed by a recipient of
26 the communication; and

27 **[(2)] (II)** May be reproduced directly in paper form by a recipient
28 through an automated process.

29 **(2) “ELECTRONIC TRANSMISSION” INCLUDES:**

1 (I) ELECTRONIC MAIL;

2 (II) FACSIMILE TRANSMISSION; AND

3 (III) INTERNET TRANSMISSION.

4 (n) "Foreign corporation" means a corporation, association, or joint-stock
5 company organized under the laws of the United States, another state of the United
6 States, a territory, possession, or district of the United States, or a foreign country.

7 (o) "Mail" means to deposit in the United States mails postage prepaid.

8 (p) "Maryland corporation" means a corporation organized and existing
9 under the laws of the State.

10 (q) "Municipal area" means any incorporated or unincorporated city, town, or
11 village.

12 (r) "Person" includes an individual, corporation, business trust, statutory
13 trust, estate, trust, partnership, limited partnership, limited liability company,
14 association, two or more persons having a joint or common interest, or any other legal
15 or commercial entity.

16 (S) "**PRECLEARANCE**" MEANS ~~APPROVAL~~ REVIEW OF THE SUFFICIENCY
17 OF A DOCUMENT OR A DRAFT OF A DOCUMENT LISTED IN § 1-203(B)(1) OR (4)
18 OF THIS TITLE BY AN AUTHORIZED AGENT OF THE DEPARTMENT BEFORE THE
19 DOCUMENT IS FILED WITH THE DEPARTMENT.

20 [(s)] (T) "Principal office" means:

21 (1) The place in this State filed or recorded with the Department as
22 the principal office of a corporation or domestic limited partnership; or

23 (2) If there is no principal office designated, the main office of the
24 corporation or domestic limited partnership in this State for the transaction of
25 business.

26 [(t)] (U) "Resident agent" means an individual residing in this State or a
27 Maryland corporation or limited liability company whose name, address, and
28 designation as a resident agent are filed or recorded with the Department in
29 accordance with the provisions of this article.

30 [(u)] (V) "Share exchange" means a transaction:

1 (1) In which a corporation acquires all the issued or all the
2 outstanding shares of stock of one or more classes of another corporation by a
3 stockholder vote under this article; and

4 (2) Which does not affect the corporate existence of either corporation.

5 **(W) (1) “SIGN” MEANS:**

6 **(I) TO EXECUTE OR OTHERWISE ADOPT A NAME, SYMBOL,**
7 **WORD, MARK, OR PROCESS; AND**

8 **(II) WITH THE PRESENT INTENT TO AUTHENTICATE OR**
9 **ADOPT A RECORD OR IDENTIFY ONESELF.**

10 **(2) “SIGN” INCLUDES:**

11 **(I) A MANUAL SIGNATURE;**

12 **(II) A FACSIMILE SIGNATURE;**

13 **(III) A CONFORMED SIGNATURE; AND**

14 **(IV) AN ELECTRONIC SIGNATURE.**

15 **[(v)] (X)** “Stated capital” means the amount of stated capital determined in
16 accordance with Title 2, Subtitle 3 of this article.

17 **[(w)] (Y)** “Stockholder” means a person who is a record holder of shares of
18 stock in a corporation and includes a member of a corporation organized without stock.

19 **[(x)] (Z)** “Stockholder rights plan” means an agreement or other instrument
20 under which a corporation issues rights to its stockholders that:

21 (1) May be exercised under specified circumstances to purchase stock
22 or other securities of a corporation or any other person; and

23 (2) May become void if owned by a designated person or classes of
24 persons under specified circumstances.

25 **[(y)] (AA)** “Successor” means:

26 (1) A new corporation formed by consolidation;

27 (2) A corporation or other entity surviving a merger;

1 (3) A corporation acquiring stock in a share exchange; or

2 (4) A vendee, lessee, or other transferee in a transfer of assets.

3 [(z)] (BB) “Transfer assets”, “transfer its assets”, and “transfer of assets”
4 mean to sell, lease, exchange, or otherwise transfer all or substantially all of the assets
5 of a corporation.

6 1–201.

7 (a) The Department may not accept for record any charter document of a
8 Maryland corporation which does not conform with law. However, any document
9 which purports to be acknowledged may be treated by the Department as properly
10 acknowledged.

11 (b) The Department may not accept for record or filing any charter
12 document, qualification, registration, change of resident agent or principal office,
13 report, service of process or notice, or other document until all required recording,
14 filing, organization and capitalization, and other special fees have been paid to the
15 Department.

16 (c) (1) [In this subsection “facsimile device” means a machine that
17 transmits, receives, and copies documents electronically or telephonically over
18 telecommunication lines.

19 (2) As provided in § 1–203.2 of this subtitle, the] **THE** Department
20 may accept documents that are filed for record by [means of a facsimile device]
21 **ELECTRONIC TRANSMISSION.**

22 [(3)] (2) Documents filed for record by [means of a facsimile device]
23 **ELECTRONIC TRANSMISSION** are subject to the regular filing fees and expedited
24 [filing] **PROCESSING** fees provided in § 1–203 of this subtitle.

25 (D) (1) **ON PAYMENT OF THE REGULAR PROCESSING FEE AND, IF**
26 **APPLICABLE, EXPEDITED PROCESSING FEE PROVIDED IN § 1–203 OF THIS**
27 **SUBTITLE, THE DEPARTMENT MAY ACCEPT FOR PRECLEARANCE ANY**
28 **DOCUMENT OR DRAFT OF ANY DOCUMENT LISTED IN § 1–203(B)(1) OR (4) OF**
29 **THIS SUBTITLE.**

30 (2) **THE DEPARTMENT MAY ADOPT REGULATIONS TO**
31 **ADMINISTER THE PRECLEARANCE PROCESS.**

32 1–203.

1 (a) In addition to any organization and capitalization fee required under §
 2 1–204 of this subtitle, subject to subsection (c) of this section, the Department shall
 3 collect the fees specified in subsection (b) of this section.

4 (b) (1) Except as provided in paragraph (11) of this subsection, for each of
 5 the following documents, the nonrefundable processing fee is \$100:

- 6 Document
- 7 Articles of incorporation
- 8 Articles of amendment
- 9 Articles of extension
- 10 Articles of restatement of charter
- 11 Articles of amendment and restatement
- 12 Articles supplementary
- 13 Articles of share exchange
- 14 Articles of consolidation, merger, or transfer
- 15 Articles of dissolution
- 16 Articles of revival for stock corporation
- 17 Articles of revival for nonstock corporation

18 (2) For each of the following documents, the nonrefundable processing
 19 fee is as indicated:

- 20 (i) Notice of change of address of principal office \$25
- 21 (ii) Notice of change of name or address of resident agent ... \$25,
 22 up to a maximum of \$30,000 for a bulk filing
- 23 (iii) Certificate of correction \$25
- 24 (iv) Any other documents \$25

25 (3) (i) For each of the following documents which are filed but not
 26 recorded, the nonrefundable processing fee is as indicated:

- 27 Reservation of a corporate, limited partnership, limited liability
 28 partnership or limited liability company name \$25
- 29 Original registration of name of a foreign corporation to end of
 30 calendar year \$100
- 31 Renewal of registration of name of a foreign corporation for one
 32 calendar year \$100
- 33 Documents in connection with the qualification of a foreign
 34 corporation to do intrastate business in this State..... \$100
- 35 Application for registration of a foreign limited partnership, a foreign
 36 limited liability partnership, or a foreign limited liability
 37 company \$100
- 38 Other documents \$6

1 (ii) For each of the following documents which are filed but not
2 recorded, the filing fee is as indicated:

3	Annual report of a Maryland corporation, except a charitable or	
4	benevolent institution, nonstock corporation, savings and loan	
5	corporation, credit union, family farm, and banking	
6	institution.....	\$300
7	Annual report of a foreign corporation subject to the jurisdiction of	
8	this State, except a national banking association, savings and	
9	loan association, credit union, nonstock corporation, and	
10	charitable and benevolent institution.....	\$300
11	Annual report of a Maryland savings and loan association, banking	
12	institution, or credit union or of a foreign savings and loan	
13	association, national banking association, or credit union that is	
14	subject to the jurisdiction of this State.....	\$300
15	Annual report of a Maryland limited liability company, limited	
16	liability partnership, limited partnership, or of a foreign limited	
17	liability company, foreign limited liability partnership, or	
18	foreign limited partnership, except a family farm.....	\$300
19	Annual report of a business trust.....	\$300
20	Annual report of a real estate investment trust or foreign statutory	
21	trust doing business in this State.....	\$300
22	Annual report of a family farm.....	\$100

23 (4) For each of the following documents recorded or filed the
24 nonrefundable processing fee is \$100:

25 (i) Certificate of limited partnership, certificate of limited
26 liability partnership, articles of organization of a limited liability company, certificate
27 of trust of a business trust, including certificates of amendment and certificates of
28 cancellation, certificates of reinstatement, and articles of reinstatement; and

29 (ii) Any statement filed by a partnership under Title 9A of this
30 article.

31 (5) For issuing each of the following certificates, the nonrefundable
32 processing fee is as indicated:

33	Type of Instrument	Special Fee
34	Certificate of status of a corporation, partnership, limited partnership,	
35	limited liability partnership, or limited liability company of this	
36	State or of a foreign corporation, foreign partnership, foreign	
37	limited partnership, foreign limited liability partnership, or	
38	foreign limited liability company.....	\$20
39	Certified list of the charter papers of a corporation of this State or any	
40	certificates of a limited partnership, limited liability	

1	partnership, or a limited liability company of this State	
2	recorded or filed with the Department.....	\$20
3	Certificate of compliance by a foreign corporation, foreign limited	
4	partnership, foreign limited liability partnership, or foreign	
5	limited liability company with requirements of law in respect of	
6	qualification or registration	\$20
7	Certificate of withdrawal of registration or qualification	\$20
8	Certificate of any paper recorded or filed in the Department’s office.....	\$20

9 (6) For a duplicate of a certificate mentioned in paragraph (5) of this
10 subsection which is issued at the same time as the original, the fee is \$1, and for a
11 copy of any other paper recorded or filed with the Department, the fee is \$1 per page.

12 (7) (i) For acceptance of service of process or notice on the
13 Department, the Department shall charge a fee of \$50.

14 (ii) Each county and Baltimore City is exempt from the fee
15 under subparagraph (i) of this paragraph.

16 (8) For processing each of the following documents on an expedited
17 basis, the additional fee is as indicated:

18	RECORDING ANY DOCUMENT, INCLUDING FINANCING	
19	STATEMENTS, OR SUBMITTING FOR PRECLEARANCE ANY	
20	DOCUMENT LISTED IN PARAGRAPH (1) OR (4) OF THIS	
21	SUBSECTION, IF PROCESSING UNDER § 1-203.2(B)(1) OF	
22	THIS SUBTITLE IS REQUESTED	\$425
23	Recording any document, including financing statements, OR	
24	SUBMITTING FOR PRECLEARANCE ANY DOCUMENT LISTED	
25	IN PARAGRAPH (1) OR (4) OF THIS SUBSECTION, IF	
26	PROCESSING UNDER § 1-203.2(B)(1) IS NOT REQUESTED	\$50
27	Certificate of status of a corporation, partnership, limited partnership,	
28	limited liability partnership, or limited liability company, or a	
29	name reservation.....	\$20
30	A copy of any document recorded or filed with the Department, or a	
31	corporate abstract.....	\$20
32	Application for a ground rent redemption or a ground rent	
33	extinguishment, or payment of a redemption or extinguishment	
34	amount to the former owner of the ground rent	\$50

35 (9) A nonrefundable processing fee for a request by paper document
36 for an extension of the date for submitting an annual report under § 14-704 of the
37 Tax – Property Article is \$20.

38 (10) A nonrefundable processing fee for return of an original document
39 is \$5.

1 (11) A nonrefundable processing fee for articles of incorporation of a
2 nonstock corporation that is organized to operate as a not-for-profit entity under §
3 501(c)(3), (4), or (6) of the Internal Revenue Code is \$150.

4 (12) A fee for the nonpayment of a check or other negotiable instrument
5 that was presented to the Department as payment for any of the other fees imposed
6 under this section is \$30.

7 **(13) A NONREFUNDABLE PROCESSING FEE FOR PRECLEARANCE**
8 **OF A DOCUMENT OR DRAFT OF A DOCUMENT LISTED IN PARAGRAPH (1) OR (4)**
9 **OF THIS SUBSECTION IS \$275.**

10 (c) For each fee identified under subsection (b) of this section as
11 nonrefundable, the Department shall adopt regulations to specify the conditions under
12 which the fee shall be nonrefundable and the conditions under which the fee may be
13 applied to a resubmission of a document for filing, recording, or processing.

14 (d) The [fee] **FEES** collected under subsection [(b)(10)] **(B)(8), (10), AND**
15 **(13)** of this section shall be credited to the fund established under § 1-203.3 of this
16 subtitle.

17 (e) Of the \$150 collected under subsection (b)(11) of this section, \$50 shall be
18 credited to the Maryland Not-For-Profit Development Center Program Fund
19 established under § 5-1204 of the Economic Development Article.

20 1-203.2.

21 (a) **[The] ON PAYMENT OF THE FEE PROVIDED IN § 1-203(B)(8) OF THIS**
22 **SUBTITLE, THE** Department shall process documents on an expedited basis [upon the
23 payment of the fee provided in § 1-203(b)(8) of this subtitle] **AS PROVIDED IN**
24 **SUBSECTION (B) OF THIS SECTION.**

25 (b) **(1) THE DEPARTMENT SHALL PROCESS DOCUMENTS FILED WITH**
26 **THE DEPARTMENT AT LEAST 2 HOURS BEFORE THE DEPARTMENT'S CLOSE OF**
27 **BUSINESS WITHIN 2 HOURS AFTER THE DOCUMENTS ARE RECEIVED.**

28 **(2) [The Department shall, to] TO** the extent practicable, **THE**
29 **DEPARTMENT SHALL** process **ALL OTHER** documents [filed in person on an
30 expedited basis] on the same day that the documents are received.

31 (c) The Department shall adopt regulations governing the **MANNER OF**
32 **FILING AND** processing of documents on an expedited basis, including reasonable
33 limitations on filing documents of unusual volume or length.

1 [(d) The fees collected under § 1-203(b)(8) of this subtitle shall be credited to
2 the fund established under § 1-203.3 of this subtitle.]

3 1-208.

4 (a) Notwithstanding any other provision of this title, an entity that is
5 required to have a resident agent may not designate a person as a resident agent
6 without first obtaining the person's written consent.

7 (b) (1) **(I) [An] UNLESS WAIVED BY THE DEPARTMENT, AN** entity
8 shall file a resident agent's written consent with the Department.

9 **[(2)] (II)** The consent shall be effective [upon] **ON** acceptance by the
10 Department.

11 **(2) (I) IF THE FILING OF A RESIDENT AGENT'S WRITTEN**
12 **CONSENT IS WAIVED BY THE DEPARTMENT, AN ENTITY SHALL:**

13 **1. CERTIFY TO THE DEPARTMENT THAT THE**
14 **WRITTEN CONSENT OF THE RESIDENT AGENT HAS BEEN OBTAINED;**

15 **2. MAINTAIN A COPY OF THE WRITTEN CONSENT IN**
16 **ITS RECORDS; AND**

17 **3. PROVIDE A COPY OF THE WRITTEN CONSENT TO**
18 **THE DEPARTMENT ON REQUEST.**

19 **(II) THE CONSENT SHALL BE EFFECTIVE ON CERTIFICATION**
20 **TO THE DEPARTMENT THAT THE CONSENT HAS BEEN OBTAINED.**

21 (c) Subsections (a) and (b) of this section do not apply to resident agents
22 designated before October 1, 1998.

23 (d) A person designated a resident agent may resign without paying the fee
24 under § 1-203(b)(2) of this subtitle.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be
26 construed to invalidate or otherwise affect any filings made with the State
27 Department of Assessments and Taxation before the effective date of this Act.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2013.