

# HOUSE BILL 1446

C1

(6lr3126)

## ENROLLED BILL

— Economic Matters/Budget and Taxation —

Introduced by **Delegate McComas**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

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

1 AN ACT concerning

2 **State Department of Assessments and Taxation - ~~Registering Entity Names -~~**  
3 **~~Limitations~~ Recordation of Governing and Charter Documents - Prohibitions**

4 FOR the purpose of prohibiting ~~certain entity names from being registered with the State~~  
5 ~~Department of Assessments and Taxation except under certain circumstances;~~  
6 ~~requiring the Department to make a certain determination under certain~~  
7 ~~circumstances; prohibiting the Department from registering a certain entity name~~  
8 ~~under certain circumstances; prohibiting the registration of a certain entity name~~  
9 ~~for a certain period of time under certain circumstances; and generally relating to~~  
10 ~~registering entity names with~~ a person from causing to be recorded a governing  
11 document or charter document of an entity that the person knows is not authorized by  
12 a certain individual or that otherwise does not conform to State law; authorizing a  
13 person who believes that a governing document or charter document was recorded in  
14 violation of a certain provision of this Act to submit a certain affidavit to the State  
15 Department of Assessments and Taxation; requiring the Department to send a certain

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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.

*Italics indicate opposite chamber/conference committee amendments.*



1 notice, in a certain manner, to a certain resident agent under certain circumstances;  
 2 requiring the Department to adopt by regulation and make available forms of certain  
 3 affidavits; authorizing the Department to void a governing document or charter  
 4 document under certain circumstances; requiring the Department to send a certain  
 5 notice to certain persons, in a certain manner, if the Department voids a governing  
 6 document or charter document and if the Department receives a certain affidavit;  
 7 authorizing a person who disagrees with a certain determination made by the  
 8 Department to file a certain petition in a certain circuit court; prohibiting the  
 9 Department from being joined as a party to a certain proceeding; requiring the  
 10 prevailing party in a certain proceeding and the Department to take certain actions if  
 11 the circuit court determines that the governing document or charter document was  
 12 recorded in violation of a certain provision of this Act; authorizing the circuit court to  
 13 award certain damages, fees, and costs to the prevailing party in a certain proceeding;  
 14 prohibiting the Department from charging a certain fee or refunding a certain fee;  
 15 authorizing the Department to adopt certain regulations; and generally relating to  
 16 the recordation of governing documents and charter documents by the State  
 17 Department of Assessments and Taxation.

18 BY adding to

19 Article – Corporations and Associations

20 Section ~~1-509~~ 1-201.1

21 Annotated Code of Maryland

22 (2014 Replacement Volume and 2015 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

24 That the Laws of Maryland read as follows:

25 **Article – Corporations and Associations**

26 ~~1-509.~~

27 ~~(A) (1) AN ENTITY NAME THAT INDICATES THE ENTITY NAME WILL BE~~  
 28 ~~USED FOR A PROFESSION OR AN OCCUPATION THAT REQUIRES LICENSURE MAY NOT~~  
 29 ~~BE REGISTERED WITH THE DEPARTMENT UNLESS THE ENTITY HAS THE~~  
 30 ~~APPROPRIATE LICENSURE.~~

31 ~~(2) THE DEPARTMENT SHALL DETERMINE WHETHER THE ENTITY~~  
 32 ~~HAS THE APPROPRIATE LICENSURE AND, IF NOT, MAY NOT REGISTER THE ENTITY~~  
 33 ~~NAME.~~

34 ~~(B) AN ENTITY NAME THAT INCLUDES THE NAME OF AN INDIVIDUAL MAY~~  
 35 ~~NOT BE REGISTERED WITH THE DEPARTMENT UNLESS THE ENTITY REGISTERING~~  
 36 ~~THE NAME IS THAT INDIVIDUAL.~~

37 ~~(C) IF AN ENTITY HAS FORFEITED THE RIGHT TO DO BUSINESS IN~~  
 38 ~~MARYLAND, AND THE RIGHT TO USE THE ENTITY NAME IS FORFEITED, THE ENTITY~~

~~1 NAME MAY NOT BE REGISTERED WITH THE DEPARTMENT UNTIL AT LEAST 24~~  
~~2 MONTHS AFTER THE DATE OF THE PROCLAMATION OF FORFEITURE.~~

3 1-201.1.

4 (A) A PERSON MAY NOT CAUSE TO BE RECORDED UNDER THIS SUBTITLE A  
5 GOVERNING DOCUMENT OR CHARTER DOCUMENT OF AN ENTITY THAT THE PERSON  
6 KNOWS:

7 (1) IS NOT AUTHORIZED BY AT LEAST ONE INDIVIDUAL WHOSE NAME  
8 IS INCLUDED IN THE ENTITY NAME; OR

9 (2) DOES NOT OTHERWISE CONFORM TO STATE LAW.

10 (B) (1) A PERSON WHO BELIEVES THAT A GOVERNING DOCUMENT OR  
11 CHARTER DOCUMENT WAS RECORDED IN VIOLATION OF SUBSECTION (A) OF THIS  
12 SECTION MAY SUBMIT TO THE DEPARTMENT AN AFFIDAVIT STATING THE FACTUAL  
13 BASIS FOR THE PERSON'S BELIEF.

14 (2) IF THE DEPARTMENT RECEIVES AN AFFIDAVIT FROM A PERSON  
15 UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT SHALL SEND TO  
16 THE RESIDENT AGENT OF THE ENTITY FOR WHICH THE GOVERNING DOCUMENT OR  
17 CHARTER DOCUMENT WAS FILED FOR RECORDATION A NOTICE THAT:

18 (I) INCLUDES A COPY OF THE GOVERNING DOCUMENT OR  
19 CHARTER DOCUMENT;

20 (II) INDICATES THE DEPARTMENT IDENTIFICATION NUMBER  
21 ASSOCIATED WITH THE ENTITY;

22 (III) STATES THE PROHIBITION UNDER SUBSECTION (A) OF THIS  
23 SECTION;

24 (IV) STATES THAT THE DEPARTMENT HAS REASON TO BELIEVE  
25 THAT THE GOVERNING DOCUMENT OR CHARTER DOCUMENT HAS BEEN FILED FOR  
26 RECORDATION IN VIOLATION OF SUBSECTION (A) OF THIS SECTION AND DESCRIBES  
27 THE FACTUAL BASIS FOR THAT BELIEF; AND

28 (V) ADVISES THAT THE GOVERNING DOCUMENT OR CHARTER  
29 DOCUMENT MAY BE VOIDED BY THE DEPARTMENT UNLESS, WITHIN 45 DAYS AFTER  
30 THE NOTICE IS SENT BY THE DEPARTMENT, THE RESIDENT AGENT OR OTHER  
31 AUTHORIZED PERSON SUBMITS TO THE DEPARTMENT AN AFFIDAVIT THAT:

1                   1. STATES THE RESIDENT AGENT'S OR OTHER  
2 AUTHORIZED PERSON'S BELIEF THAT THE GOVERNING DOCUMENT OR CHARTER  
3 DOCUMENT DOES NOT VIOLATE SUBSECTION (A) OF THIS SECTION; AND

4                   2. PROVIDES THE FACTUAL BASIS FOR THAT BELIEF.

5                   (3) THE NOTICE REQUIRED UNDER THIS SUBSECTION SHALL BE SENT  
6 BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND BY FIRST-CLASS MAIL, TO  
7 THE ENTITY'S RESIDENT AGENT AT THE ADDRESS PROVIDED FOR THE RESIDENT  
8 AGENT IN THE GOVERNING DOCUMENT OR CHARTER DOCUMENT.

9                   (C) (1) THE DEPARTMENT SHALL ADOPT BY REGULATION AND MAKE  
10 AVAILABLE FORMS OF THE AFFIDAVITS THAT MUST BE USED FOR THE PURPOSES  
11 DESCRIBED IN SUBSECTION (B)(1) AND (B)(2)(V) OF THIS SECTION.

12                   (2) THE FORMS SHALL REQUIRE THAT THE AFFIDAVITS BE SWORN  
13 UNDER THE PENALTIES OF PERJURY.

14                   (D) (1) THE DEPARTMENT MAY VOID A GOVERNING DOCUMENT OR  
15 CHARTER DOCUMENT AFTER THE EXPIRATION OF THE 45-DAY PERIOD SPECIFIED IN  
16 THE NOTICE REQUIRED UNDER SUBSECTION (B)(2)(V) OF THIS SECTION IF THE  
17 DEPARTMENT DOES NOT RECEIVE FROM THE ENTITY'S RESIDENT AGENT OR OTHER  
18 AUTHORIZED PERSON AN AFFIDAVIT THAT:

19                   (I) STATES THE RESIDENT AGENT'S OR OTHER AUTHORIZED  
20 PERSON'S BELIEF THAT THE GOVERNING DOCUMENT OR CHARTER DOCUMENT DOES  
21 NOT VIOLATE SUBSECTION (A) OF THIS SECTION; AND

22                   (II) PROVIDES THE FACTUAL BASIS FOR THAT BELIEF.

23                   (2) IF THE DEPARTMENT VOIDS A GOVERNING DOCUMENT OR  
24 CHARTER DOCUMENT UNDER THIS SUBSECTION, THE DEPARTMENT PROMPTLY  
25 SHALL SEND NOTICE OF THE VOIDING TO ALL PERSONS WHO SUBMITTED AFFIDAVITS  
26 IN ACCORDANCE WITH SUBSECTION (B)(1) OF THIS SECTION.

27                   (E) (1) IF THE DEPARTMENT RECEIVES AN AFFIDAVIT IN RESPONSE TO  
28 THE NOTICE SENT BY THE DEPARTMENT UNDER SUBSECTION (B)(2) OF THIS  
29 SECTION, THE DEPARTMENT SHALL SEND A NOTICE STATING THAT THE  
30 DEPARTMENT WILL TAKE NO FURTHER ACTION UNLESS A COURT OF COMPETENT  
31 JURISDICTION ORDERS THE DEPARTMENT TO TAKE FURTHER ACTION.

32                   (2) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS  
33 SUBSECTION SHALL BE SENT IN THE SAME MANNER REQUIRED FOR THE NOTICE  
34 SENT UNDER SUBSECTION (B)(2)(V) OF THIS SECTION TO:

1                    (I) THE PERSON WHO FILED THE AFFIDAVIT DESCRIBED IN  
2 SUBSECTION (B)(1) OF THIS SECTION; AND

3                    (II) THE ENTITY'S RESIDENT AGENT.

4                    (F) (1) A PERSON WHO DISAGREES WITH A DETERMINATION MADE BY THE  
5 DEPARTMENT UNDER SUBSECTION (E)(1) OF THIS SECTION MAY FILE A PETITION IN  
6 THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE PERSON RESIDES OR IN WHICH  
7 THE RESIDENT AGENT IS LOCATED, SEEKING A DETERMINATION OF THE VALIDITY OF  
8 THE GOVERNING DOCUMENT OR CHARTER DOCUMENT.

9                    (2) THE DEPARTMENT MAY NOT BE JOINED AS A PARTY TO A  
10 PROCEEDING UNDER THIS SUBSECTION.

11                    (3) IF THE COURT DETERMINES THAT THE GOVERNING DOCUMENT OR  
12 CHARTER DOCUMENT WAS RECORDED IN VIOLATION OF SUBSECTION (A) OF THIS  
13 SECTION:

14                    (I) THE COURT SHALL ORDER THAT THE RECORDED  
15 GOVERNING DOCUMENT OR CHARTER DOCUMENT BE VOIDED; AND

16                    (II) THE PREVAILING PARTY SHALL PROVIDE A COPY OF THE  
17 ORDER TO THE DEPARTMENT.

18                    (4) ON RECEIPT OF A COURT ORDER REQUIRING VOIDING OF A  
19 RECORDED GOVERNING DOCUMENT OR CHARTER DOCUMENT, THE DEPARTMENT  
20 SHALL:

21                    (I) VOID THE GOVERNING DOCUMENT OR CHARTER  
22 DOCUMENT; AND

23                    (II) FILE A RECORD INDICATING THAT THE GOVERNING  
24 DOCUMENT OR CHARTER DOCUMENT WAS VOIDED IN ACCORDANCE WITH A COURT  
25 ORDER.

26                    (5) THE COURT MAY AWARD TO THE PREVAILING PARTY IN A  
27 PROCEEDING UNDER THIS SUBSECTION:

28                    (I) DAMAGES SUSTAINED BY THE PREVAILING PARTY; AND

29                    (II) REASONABLE ATTORNEY'S FEES AND COSTS.

30                    (G) THE DEPARTMENT MAY NOT:

1                    **(1) CHARGE A FEE TO CARRY OUT ITS OBLIGATIONS UNDER THIS**  
2 **SECTION, INCLUDING FOR THE SENDING OF ANY NOTICES REQUIRED UNDER THIS**  
3 **SECTION; OR**

4                    **(2) REFUND ANY FEE PAID FOR RECORDING A GOVERNING DOCUMENT**  
5 **OR CHARTER DOCUMENT VOIDED UNDER THIS SECTION.**

6                    **(H) THE DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THIS**  
7 **SECTION.**

8                    SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9                    October 1, 2016.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.