

# SENATE BILL 1056

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CF HB 1513

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By: **Senator Feldman**

Introduced and read first time: February 18, 2016

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Corporations – Formation of a Holding Company by Merger**

3 FOR the purpose of establishing a process for the formation of a certain holding company  
4 through the merger of a Maryland parent corporation with or into a certain  
5 wholly owned subsidiary of the Maryland parent corporation; providing that a vote  
6 of the stockholders of the parent corporation is not necessary to authorize the merger  
7 under certain circumstances, unless the charter of the parent corporation expressly  
8 provides otherwise; requiring that the merger be approved by a majority of the entire  
9 board of directors of the parent corporation; establishing the conditions under which  
10 the merger may be effectuated; establishing the effects of the merger; authorizing a  
11 merger of a parent real estate investment trust into a certain subsidiary real estate  
12 investment trust to be approved in a certain manner, under certain circumstances;  
13 defining a certain term; and generally relating to the establishment of a process for  
14 forming a holding company through a merger.

15 BY adding to

16 Article – Corporations and Associations  
17 Section 3–106.2  
18 Annotated Code of Maryland  
19 (2014 Replacement Volume and 2015 Supplement)

20 BY repealing and reenacting, with amendments,

21 Article – Corporations and Associations  
22 Section 8–501.1(c)  
23 Annotated Code of Maryland  
24 (2014 Replacement Volume and 2015 Supplement)

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

27 **Article – Corporations and Associations**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **3-106.2.**

2 (A) IN THIS SECTION, "HOLDING COMPANY" MEANS A MARYLAND  
3 CORPORATION:

4 (1) THAT, FROM ITS INCORPORATION UNTIL CONSUMMATION OF A  
5 MERGER GOVERNED BY THIS SECTION, HAS BEEN AT ALL TIMES A DIRECT OR  
6 INDIRECT WHOLLY OWNED SUBSIDIARY CORPORATION; AND

7 (2) THE STOCK OF WHICH IS ISSUED IN THE MERGER.

8 (B) NOTWITHSTANDING § 3-105 OF THIS SUBTITLE, UNLESS THE CHARTER  
9 OF A PARENT CORPORATION EXPRESSLY PROVIDES OTHERWISE, A VOTE OF THE  
10 STOCKHOLDERS OF THE PARENT CORPORATION IS NOT NECESSARY TO AUTHORIZE  
11 A MERGER WITH OR INTO A SINGLE DIRECT OR INDIRECT WHOLLY OWNED  
12 SUBSIDIARY CORPORATION OF THE PARENT CORPORATION IF:

13 (1) THE PARENT CORPORATION AND THE DIRECT OR INDIRECT  
14 WHOLLY OWNED SUBSIDIARY CORPORATION ARE THE ONLY PARTIES TO THE  
15 MERGER;

16 (2) EACH SHARE OR FRACTION OF A SHARE OF THE STOCK OF THE  
17 PARENT CORPORATION OUTSTANDING IMMEDIATELY PRIOR TO THE EFFECTIVE  
18 TIME OF THE MERGER IS CONVERTED IN THE MERGER INTO A SHARE OR EQUAL  
19 FRACTION OF A SHARE OF THE STOCK OF A HOLDING COMPANY HAVING THE SAME  
20 CONTRACT RIGHTS AS THE SHARE OF STOCK OF THE PARENT CORPORATION BEING  
21 CONVERTED IN THE MERGER;

22 (3) THE HOLDING COMPANY, THE PARENT CORPORATION, AND THE  
23 DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARY CORPORATION THAT IS THE  
24 OTHER PARTY TO THE MERGER ARE MARYLAND CORPORATIONS;

25 (4) THE CHARTER AND BYLAWS OF THE HOLDING COMPANY  
26 IMMEDIATELY FOLLOWING THE EFFECTIVE TIME OF THE MERGER ARE IDENTICAL  
27 TO THE CHARTER AND BYLAWS OF THE PARENT CORPORATION IN EFFECT  
28 IMMEDIATELY PRIOR TO THE EFFECTIVE TIME OF THE MERGER, OTHER THAN:

29 (I) PROVISIONS, IF ANY, REGARDING THE INCORPORATOR OR  
30 INCORPORATORS, THE PRINCIPAL OFFICE, THE RESIDENT AGENT, AND THE INITIAL  
31 BOARD OF DIRECTORS;

1 (II) PROVISIONS AUTHORIZED UNDER § 2-605 OF THIS  
2 ARTICLE; AND

3 (III) ANY AMENDMENT TO THE CHARTER THAT WAS NECESSARY  
4 TO EFFECT A CHANGE, EXCHANGE, RECLASSIFICATION, SUBDIVISION,  
5 COMBINATION, OR CANCELLATION OF STOCK, IF THE CHANGE, EXCHANGE,  
6 RECLASSIFICATION, SUBDIVISION, COMBINATION, OR CANCELLATION OF STOCK  
7 HAS BECOME EFFECTIVE;

8 (5) AS A RESULT OF THE MERGER, THE PARENT CORPORATION OR ITS  
9 SUCCESSOR BECOMES A DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARY  
10 CORPORATION OF THE HOLDING COMPANY;

11 (6) THE DIRECTORS OF THE PARENT CORPORATION BECOME OR  
12 REMAIN THE DIRECTORS OF THE HOLDING COMPANY AT THE EFFECTIVE TIME OF  
13 THE MERGER;

14 (7) THE STOCKHOLDERS OF THE PARENT CORPORATION DO NOT  
15 RECOGNIZE GAIN OR LOSS FOR FEDERAL INCOME TAX PURPOSES, AS DETERMINED  
16 BY THE BOARD OF DIRECTORS OF THE PARENT CORPORATION; AND

17 (8) A MAJORITY OF THE ENTIRE BOARD OF DIRECTORS OF THE  
18 PARENT CORPORATION APPROVES THE MERGER.

19 (C) FROM AND AFTER THE EFFECTIVE TIME OF A MERGER UNDER  
20 SUBSECTION (B) OF THIS SECTION:

21 (1) TO THE EXTENT THAT THE RESTRICTIONS UNDER § 3-602 OF THIS  
22 TITLE APPLIED TO THE PARENT CORPORATION AND THE STOCKHOLDERS OF THE  
23 PARENT CORPORATION AT THE EFFECTIVE TIME OF THE MERGER:

24 (I) THE RESTRICTIONS SHALL APPLY TO THE HOLDING  
25 COMPANY AND THE STOCKHOLDERS OF THE HOLDING COMPANY IMMEDIATELY  
26 AFTER THE EFFECTIVE TIME OF THE MERGER AS THOUGH THE HOLDING COMPANY  
27 WAS THE PARENT COMPANY;

28 (II) FOR PURPOSES OF § 3-602 OF THIS TITLE, ALL SHARES OF  
29 STOCK OF THE HOLDING COMPANY ACQUIRED IN THE MERGER SHALL BE DEEMED  
30 TO HAVE BEEN ACQUIRED AT THE TIME THAT THE SHARES OF STOCK OF THE PARENT  
31 CORPORATION CONVERTED IN THE MERGER WERE ACQUIRED; AND

32 (III) 1. ANY STOCKHOLDER THAT IMMEDIATELY PRIOR TO  
33 THE EFFECTIVE TIME OF THE MERGER WAS NOT AN INTERESTED STOCKHOLDER, AS

1 DEFINED IN § 3-601 OF THIS TITLE, DOES NOT, SOLELY BY REASON OF THE MERGER,  
2 BECOME AN INTERESTED STOCKHOLDER OF THE HOLDING COMPANY; AND

3                   2. ANY STOCKHOLDER THAT IMMEDIATELY PRIOR TO  
4 THE EFFECTIVE TIME OF THE MERGER WAS AN INTERESTED STOCKHOLDER, AS  
5 DEFINED IN § 3-601 OF THIS TITLE, REMAINS AN INTERESTED STOCKHOLDER OF  
6 THE HOLDING COMPANY;

7                   (2) TO THE EXTENT THAT, AT THE EFFECTIVE TIME OF THE MERGER,  
8 ANY APPROVAL BY THE STOCKHOLDERS OF THE PARENT CORPORATION UNDER §  
9 3-702(A) OF THIS TITLE APPLIED TO THE PARENT CORPORATION AND ANY CONTROL  
10 SHARES OF THE PARENT CORPORATION, THE APPROVAL SHALL APPLY TO THE  
11 HOLDING COMPANY AND ANY CONTROL SHARES OF THE HOLDING COMPANY  
12 IMMEDIATELY AFTER THE EFFECTIVE TIME OF THE MERGER AS IF THE HOLDING  
13 COMPANY WERE THE PARENT CORPORATION;

14                   (3) TO THE EXTENT THAT, AT THE EFFECTIVE TIME OF THE MERGER,  
15 THE BOARD OF DIRECTORS OF THE PARENT CORPORATION HAD ELECTED BY  
16 RESOLUTION TO BE SUBJECT TO OR NOT TO BE SUBJECT TO, WHOLLY OR PARTLY,  
17 ANY OR ALL PROVISIONS OF SUBTITLE 8 OF THIS TITLE, THE ELECTION SHALL  
18 APPLY TO THE HOLDING COMPANY IMMEDIATELY AFTER THE EFFECTIVE TIME OF  
19 THE MERGER AS IF THE HOLDING COMPANY WERE THE PARENT CORPORATION;

20                   (4) IF THE CORPORATE NAME OF THE HOLDING COMPANY  
21 IMMEDIATELY FOLLOWING THE EFFECTIVE DATE OF THE MERGER IS THE SAME AS  
22 THE CORPORATE NAME OF THE PARENT CORPORATION IMMEDIATELY PRIOR TO THE  
23 EFFECTIVE TIME OF THE MERGER, THE SHARES OF STOCK OF THE HOLDING  
24 COMPANY INTO WHICH THE SHARES OF STOCK OF THE PARENT CORPORATION ARE  
25 CONVERTED IN THE MERGER MAY CONTINUE TO BE REPRESENTED BY THE STOCK  
26 CERTIFICATES THAT PREVIOUSLY REPRESENTED SHARES OF STOCK OF THE PARENT  
27 CORPORATION; AND

28                   (5) TO THE EXTENT THAT A STOCKHOLDER OF THE PARENT  
29 CORPORATION IMMEDIATELY PRIOR TO THE MERGER HAD STANDING TO INSTITUTE  
30 OR MAINTAIN DERIVATIVE LITIGATION ON BEHALF OF THE PARENT CORPORATION,  
31 THE STOCKHOLDER SHALL HAVE STANDING TO INSTITUTE OR MAINTAIN  
32 DERIVATIVE LITIGATION ON BEHALF OF THE HOLDING COMPANY.

33 8-501.1.

34                   (c) A merger shall be approved in the manner provided by this section, except  
35 that:

1 (1) A foreign business trust, a Maryland business trust, other than a  
2 Maryland real estate investment trust, a corporation, a domestic or foreign partnership, or  
3 a domestic or foreign limited partnership party to the merger shall have the merger  
4 advised, authorized, and approved in the manner and by the vote required by its declaration  
5 of trust, governing instrument, charter, or partnership agreement and the laws of the place  
6 where it is organized;

7 (2) (i) A foreign limited liability company party to the merger shall  
8 have the merger advised, authorized, and approved in the manner and by the vote required  
9 by the laws of the place where it is organized; and

10 (ii) A domestic limited liability company shall have the merger  
11 approved in the manner provided under § 4A-703 of this article;

12 (3) A merger need be approved by a Maryland real estate investment trust  
13 successor only by a majority of its entire board of trustees if the merger does not reclassify  
14 or change the terms of any class or series of its shares that are outstanding immediately  
15 before the merger becomes effective or otherwise amend its declaration of trust and the  
16 number of shares of such class or series outstanding immediately after the effective time of  
17 the merger does not increase by more than 20 percent of the number of its shares of the  
18 class or series of shares outstanding immediately before the merger becomes effective;

19 (4) A merger of a subsidiary with or into its parent need be approved only  
20 in the manner provided in § 3-106 of this article, provided the parent owns at least 90  
21 percent of the subsidiary; [and]

22 (5) A merger of a Maryland real estate investment trust in accordance with  
23 § 3-106.1 of this article need be approved only in the manner provided in § 3-106.1 of this  
24 article; AND

25 **(6) A MERGER OF A PARENT REAL ESTATE INVESTMENT TRUST WITH**  
26 **OR INTO A SINGLE DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARY REAL ESTATE**  
27 **INVESTMENT TRUST MAY BE APPROVED IN THE MANNER PROVIDED IN § 3-106.2 OF**  
28 **THIS ARTICLE, PROVIDED THE MERGER OTHERWISE CONFORMS TO THE**  
29 **REQUIREMENTS UNDER § 3-106.2 OF THIS ARTICLE.**

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