

SB0544_FAV_MSBA.Committee on Corporation Law_Carls

Uploaded by: William Carlson

Position: FAV



**2024 REPORT OF THE COMMITTEE ON CORPORATION LAW
OF THE SECTION ON BUSINESS LAW OF THE MARYLAND STATE BAR ASSOCIATION
WITH RESPECT TO**

SENATE BILL 544

**“CORPORATIONS AND ASSOCIATIONS –
RATIFICATION OF DEFECTIVE CORPORATE ACTS - ALTERATIONS”**

I. INTRODUCTION

The Committee on Corporation Law of the Section on Business Law of the Maryland State Bar Association monitors the Maryland General Corporation Law, the Maryland REIT Law, and the application and utility of other Maryland business-related laws. Our Committee, working with Senators Waldstreicher and West and Delegate Amprey, has developed and is pleased to support Senate Bill 544 (“Corporations and Associations – Ratification of Defective Corporate Acts - Alterations”) and its cross-filed companion, House Bill 888.

**Our Committee is
FAVORABLE in support of SB 544.**

II. OVERVIEW

Senate Bill 544 would revise Subtitle 7 to Title 2 of the Maryland General Corporation Law which was adopted in 2022 to provide a statutory safe harbor procedure for ratifying corporate acts or transactions and stock that, due to a “failure of authorization”, would be void or voidable. Examples of defective corporate acts include an overissuance of shares of stock, corporate action taken in the absence of board resolutions authorizing the action, and the failure to file with the State Department of Assessments and Taxation a required charter document.

The proposed amendments would clarify certain provisions, address internal inconsistencies, and bring this Subtitle more in line with the Model Business Corporation Act and, in respect to a few provisions, with Section 204 of the Delaware General Corporation Law. In short, the use of this new statutory procedure over the past two years and further examination of several late amendments to the Bill in 2022 have suggested several alterations.

The proposed alterations include:

- Looking to the present Section 2-701(b) of the Maryland General Corporation Law, we recommend deleting the definition of “corporate act”. The term “corporate act” is used elsewhere in the MGCL without any definition, e.g., Section 1-102(a) and Section 2-501(e). Defining “corporate act” as a defined term in this Subtitle may incorrectly suggest unintended limitations on the defective corporate acts that may be ratified. This new approach (without the use of a defined term) is the same as is taken by the Delaware General Corporation Law, see DGCL Section 204(h)(1).
- The insertion of the word “purported” (as is used in comparable statutory “ratification of defective corporate acts” laws in other states) into the definitions of “overissue” and “putative stock” in Section 2-701 underscores that the issuance or the action may have been defective.
- Without the addition of “Under this Subtitle” in Section 2-702(a), Section 2-702 may be incorrectly read, contrary to Section 2-707, that all ratifications of a defective corporate act require the process under Section 2-702.
- The other alterations to Section 2-702 clarify the approval, quorum, and other requirements that apply to a ratification when those approval, quorum, and other requirements are different now than when the defective corporate act purportedly occurred. Simply put, the higher quorum requirement or the more stringent approval requirement shall apply.
- In Section 2-703(a)(2), the word “time” (which is used in similar Sections in the MGCL, see, e.g., Section 2-610.1 as to Articles of Amendment and Section 3-113(a) as to Articles of Merger) is preferred instead of the use of the word “date.”
- The revision in Section 2-703(b) corrects an incorrect internal Section reference.
- The alterations to Section 2-704 clarify the “notice” requirements. In particular, we note that under SEC rules public disclosure may be either “filed” or “furnished” (which are two different concepts) and that the MGCL generally refers to notices being “given”, not “provided.” “Given” is used elsewhere in Section 2-704(c).
- Section 2-705, in respect to a new charter document, Articles of Validation, clarifies what must be stated in the Articles and, in deleting Section 2-705(b)(5), removes a provision that duplicates Section 2-703(a)(2). This treatment of the effective time is consistent with the handling of other MGCL sections specifying the contents of other articles, see, e.g., Section 2-607 as to Articles of Amendment.
- The revisions to Section 2-706 alter the process to bring an action in court to determine the validity of any ratification under this Subtitle or to modify or waive any ratification procedure. The revisions also provide that any such action must be brought in a court of this State or a Federal Court sitting in this State.

- The one-word revision in Section 2-707(a) replaces the word “ability” with the word “right” (which is used in similar contexts in the MGCL) in respect to the right of a corporation to ratify a defective corporate act by varying means. The MGCL generally speaks of “rights” (e.g., Section 2-105 and Section 3-201) and “powers” (see, e.g., Section 2-103 and Section 2-104(b)(i)), not “ability.”

III. CONCLUSION

The Committee on Corporation Law of the Section on Business Law of the Maryland State Bar Association urges the Judicial Proceedings Committee to issue a favorable recommendation in support of Senate Bill 544.

Respectfully submitted,

MSBA Section of Business Law, Committee on
Corporation Law

William E. Carlson, Chair
Scott R. Wilson, Vice Chair

February 20, 2023