

SENATE BILL 400

C1

4r1656
CF 4r1938

By: **Senators West and Waldstreicher**

Introduced and read first time: January 18, 2024

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Associations – Definitions, Emergencies, and Outstanding**
3 **Stock – Revisions**

4 FOR the purpose of altering certain definitions as they relate to certain Maryland business
5 entities; authorizing a corporation to adopt certain emergency bylaws; authorizing a
6 corporation to take certain actions during an emergency; limiting the liability of
7 certain persons for certain corporate acts taken during an emergency; clarifying
8 when certain stock is outstanding; and generally relating to corporations and
9 associations.

10 BY repealing and reenacting, without amendments,
11 Article – Corporations and Associations
12 Section 1–101(a) and 2–101
13 Annotated Code of Maryland
14 (2014 Replacement Volume and 2023 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Corporations and Associations
17 Section 1–101(w) and (x), 2–310, and 8–601.1
18 Annotated Code of Maryland
19 (2014 Replacement Volume and 2023 Supplement)

20 BY adding to
21 Article – Corporations and Associations
22 Section 2–116 through 2–118
23 Annotated Code of Maryland
24 (2014 Replacement Volume and 2023 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Corporations and Associations

1-101.

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

(w) “Principal office” means:

(1) The place in this State filed or recorded with the Department as the principal office of a **MARYLAND corporation, LIMITED LIABILITY COMPANY, LIMITED LIABILITY PARTNERSHIP**, or [domestic] limited partnership; or

(2) If there is no principal office designated, the main office of the **MARYLAND corporation, LIMITED LIABILITY COMPANY, LIMITED LIABILITY PARTNERSHIP**, or [domestic] limited partnership in this State for the transaction of business.

(x) “Resident agent” means an individual residing in this State or a Maryland corporation [or], limited liability company, **OR LIMITED PARTNERSHIP** whose name, address, and designation as a resident agent are filed or recorded with the Department in accordance with the provisions of this article.

2-101.

(a) Except as otherwise expressly provided by law, a corporation may be formed under this title for any lawful purposes.

(b) If the purpose for which a corporation is organized or its form makes it subject to a special provision of law, the corporation also shall comply with that provision.

2-116.

(A) IN THIS SECTION, “EMERGENCY” MEANS A SITUATION IN WHICH A QUORUM OF THE BOARD OF DIRECTORS CANNOT READILY BE ASSEMBLED BECAUSE OF SOME CATASTROPHIC EVENT.

(B) (1) UNLESS THE CHARTER PROVIDES OTHERWISE, THE BYLAWS MAY CONTAIN PROVISIONS TO BE EFFECTIVE ONLY DURING AN EMERGENCY.

(2) THE EMERGENCY PROVISIONS MAY BE ADOPTED ONLY IN ADVANCE OF AN EMERGENCY.

1 **(3) THE EMERGENCY PROVISIONS MAY MAKE ALL PROVISIONS**
2 **NECESSARY FOR MANAGING THE CORPORATION DURING AN EMERGENCY,**
3 **INCLUDING:**

4 **(I) PROCEDURES FOR CALLING A MEETING OF THE BOARD OF**
5 **DIRECTORS;**

6 **(II) QUORUM REQUIREMENTS FOR A MEETING; AND**

7 **(III) DESIGNATION OF ADDITIONAL OR SUBSTITUTE DIRECTORS.**

8 **(C) ALL PROVISIONS OF THE BYLAWS NOT INCONSISTENT WITH THE**
9 **EMERGENCY PROVISIONS REMAIN EFFECTIVE DURING AN EMERGENCY.**

10 **(D) ANY CORPORATE ACT TAKEN IN GOOD FAITH AND IN ACCORDANCE WITH**
11 **THE EMERGENCY PROVISIONS:**

12 **(1) BINDS THE CORPORATION; AND**

13 **(2) MAY NOT BE USED TO IMPOSE LIABILITY ON A DIRECTOR, AN**
14 **OFFICER, AN EMPLOYEE, OR AN AGENT OF THE CORPORATION.**

15 **(E) THE EMERGENCY PROVISIONS MAY STATE THAT THE STANDARD OF**
16 **CONDUCT REQUIRED BY § 2-405.1 OF THIS TITLE SHALL APPLY TO THE CONDUCT OF**
17 **A DIRECTOR ACTING PURSUANT TO THE EMERGENCY PROVISIONS.**

18 **2-117.**

19 **(A) IN THIS SECTION, “EMERGENCY” HAS THE MEANING STATED IN § 2-116**
20 **OF THIS SUBTITLE.**

21 **(B) DURING AN EMERGENCY, UNLESS THE BYLAWS CONTAIN EMERGENCY**
22 **PROVISIONS PROVIDING OTHERWISE, NOTICE OF A MEETING OF THE BOARD OF**
23 **DIRECTORS MAY BE GIVEN:**

24 **(1) ONLY TO THOSE DIRECTORS WHOM IT IS PRACTICABLE TO REACH**
25 **IN THE CIRCUMSTANCES;**

26 **(2) IN ANY PRACTICABLE MANNER GIVEN THE CIRCUMSTANCES; AND**

27 **(3) WITH SHORTER NOTICE AS IS REASONABLE IN THE**
28 **CIRCUMSTANCES.**

1 (C) ANY CORPORATE ACT TAKEN IN GOOD FAITH UNDER THIS SECTION
2 DURING AN EMERGENCY:

3 (1) BINDS THE CORPORATION; AND

4 (2) MAY NOT BE USED TO IMPOSE LIABILITY ON A DIRECTOR, AN
5 OFFICER, AN EMPLOYEE, OR AN AGENT OF THE CORPORATION.

6 2-118.

7 (A) IN THIS SECTION, "EMERGENCY" MEANS A SITUATION IN WHICH IT IS
8 IMPRACTICABLE TO CONVENE A MEETING OF STOCKHOLDERS IN ACCORDANCE
9 WITH THE MARYLAND GENERAL CORPORATION LAW OR THE BYLAWS OR AS
10 SPECIFIED IN A NOTICE FOR THE MEETING PREVIOUSLY GIVEN, BECAUSE OF SOME
11 CATASTROPHIC EVENT.

12 (B) DURING AN EMERGENCY, UNLESS THE BYLAWS CONTAIN EMERGENCY
13 PROVISIONS PROVIDING OTHERWISE, THE BOARD OF DIRECTORS MAY:

14 (1) POSTPONE A MEETING OF STOCKHOLDERS FOR WHICH NOTICE
15 HAS BEEN GIVEN; OR

16 (2) AUTHORIZE STOCKHOLDERS TO PARTICIPATE IN A MEETING BY
17 ANY MEANS OF REMOTE COMMUNICATION AUTHORIZED BY § 2-503(C)(2) OF THIS
18 TITLE.

19 (C) THE CORPORATION SHALL GIVE NOTICE TO STOCKHOLDERS OF ANY
20 ACTION TAKEN UNDER THIS SECTION, INCLUDING ANY NEW DATE, TIME, OR PLACE
21 OF A MEETING:

22 (1) IN ANY PRACTICABLE MANNER GIVEN THE CIRCUMSTANCES; AND

23 (2) WITH SHORTER NOTICE AS IS REASONABLE IN THE
24 CIRCUMSTANCES.

25 (D) ANY CORPORATE ACT TAKEN IN GOOD FAITH UNDER THIS SECTION
26 DURING AN EMERGENCY:

27 (1) BINDS THE CORPORATION; AND

28 (2) MAY NOT BE USED TO IMPOSE LIABILITY ON A DIRECTOR, AN
29 OFFICER, AN EMPLOYEE, OR AN AGENT OF THE CORPORATION.

1 2-310.

2 (a) (1) Subject to the provisions of its charter and § 2-311 of this subtitle, if
3 authorized by its board of directors, a corporation may acquire the corporation's own shares.

4 (2) Shares acquired under paragraph (1) of this subsection constitute
5 authorized but unissued shares.

6 (3) Shares of a corporation's own stock acquired by the corporation between
7 the record date for determining stockholders entitled to notice of or to vote at a meeting of
8 stockholders and the time of the meeting may be voted at the meeting by the holder of
9 record as of the record date and shall be counted in determining the total number of
10 outstanding shares entitled to be voted at the meeting.

11 (4) (I) **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
12 **PARAGRAPH, AND UNLESS THE CHARTER PROVIDES OTHERWISE, STOCK SHALL**
13 **CEASE TO BE OUTSTANDING ON THE DATE OF REDEMPTION OR REPURCHASE IF A**
14 **CORPORATION HAS:**

15 1. **GIVEN A NOTICE OF REDEMPTION OF STOCK OR**
16 **REPURCHASE OF STOCK PURSUANT TO A RIGHT OF REDEMPTION SET FORTH IN THE**
17 **CHARTER OR A DULY ADOPTED REPURCHASE PLAN BINDING ON THE STOCKHOLDER;**
18 **AND**

19 2. **PAID OR SET ASIDE SUFFICIENT FUNDS FOR THE**
20 **BENEFIT OF THE HOLDER OF THE STOCK CALLED FOR REDEMPTION OR**
21 **REPURCHASE.**

22 (II) **THIS PARAGRAPH DOES NOT AFFECT THE RIGHT OF A**
23 **STOCKHOLDER TO RECEIVE PAYMENT OF THE REDEMPTION OR REPURCHASE**
24 **PRICE.**

25 (b) If the charter prohibits the issuance of acquired shares, the number of
26 authorized shares is reduced by the number of shares acquired, effective upon the filing
27 with the Department of articles supplementary which shall set forth:

28 (1) The name of the corporation;

29 (2) The number of outstanding shares of stock of the corporation that have
30 been acquired by the corporation and that by their terms may not be reissued, and the class
31 and series of the shares;

32 (3) The number of authorized shares of the corporation remaining after the
33 acquisition of outstanding shares, itemized by class and series; and

1 (4) The fact that no amendment to the charter is effected by the articles
2 supplementary, their sole purpose being to record the reduction of authorized shares
3 resulting from the acquisition of shares that by the terms of the existing charter may not
4 be reissued.

5 8-601.1.

6 Sections 2-113, **2-116 THROUGH 2-118**, 2-201(c), 2-309(a) and (e), 2-313,
7 2-502(e), 2-503(b), 2-504(f), and 2-701 through 2-707 of this article and, except as
8 otherwise provided in § 8-601 of this subtitle or in the declaration of trust, § 2-405.1 of this
9 article shall apply to real estate investment trusts.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2024.