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1998 Regular Session
8lr1230

By: Delegate Frank

Introduced and read first time: January 30, 1998

Assigned to: Economic Matters

### A BILL ENTITLED

### 1 AN ACT concerning

## 2 Corporations and Real Estate Investment Trusts - Extraordinary Actions

- 3 FOR the purpose of allowing certain amendments to be made to the charter of a
- 4 corporation or to the declaration of trust of a real estate investment trust
- 5 without stockholder or shareholder approval; repealing certain provisions of law
- 6 allowing certain amendments to be made to the charter of a corporation without
- 7 stockholder approval; allowing a Maryland corporation to consolidate with and
- 8 merge into a corporation or business trust organized under the laws of a foreign
- 9 country; allowing a Maryland real estate investment trust to merge into a
- business trust organized under the laws of a foreign country; altering the
- circumstances under which a merger of a 90 percent or more owned subsidiary
- 12 corporation with or into its parent corporation may be effected without
- stockholder approval; allowing a declaration of trust of a real estate investment
- trust to include a provision requiring for any action a greater proportion of votes
- than provided by statute; allowing proposed amendments to the declaration of
- trust of a real estate investment trust to be approved by written consent of the
- shareholders; altering certain definitions; making conforming and stylistic
- changes; and generally relating to mergers, consolidations, and amendments to
- 19 the charters of corporations and the declarations of trust of real estate
- 20 investment trusts.
- 21 BY repealing and reenacting, with amendments,
- 22 Article Corporations and Associations
- 23 Section 2-105(a) and (c), 2-306, 2-604, 2-605, 2-607(a), 3-101(b) and (e),
- 24 3-106, 3-202(b) and (c), 3-203(a), 8-202(c), 8-501, and 8-501.1(a)(3)
- 25 Annotated Code of Maryland
- 26 (1993 Replacement Volume and 1997 Supplement)
- 27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
- 28 MARYLAND, That the Laws of Maryland read as follows:

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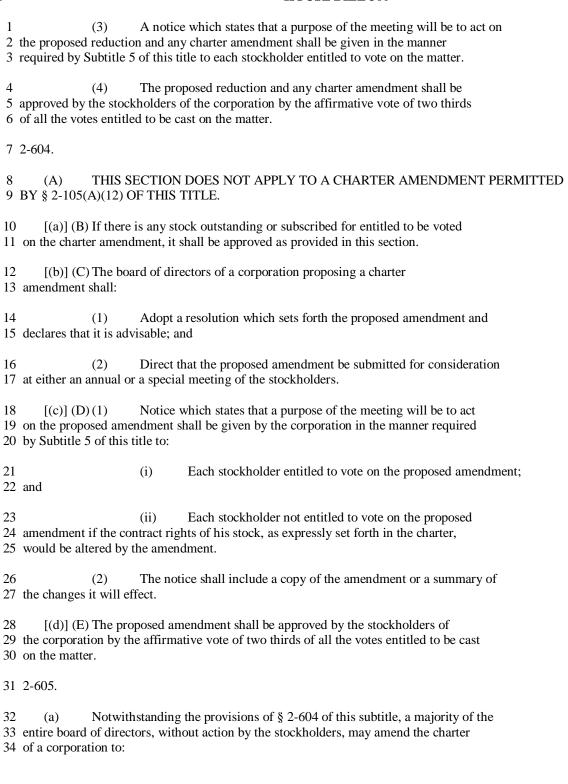
35 additional issues of stock; or

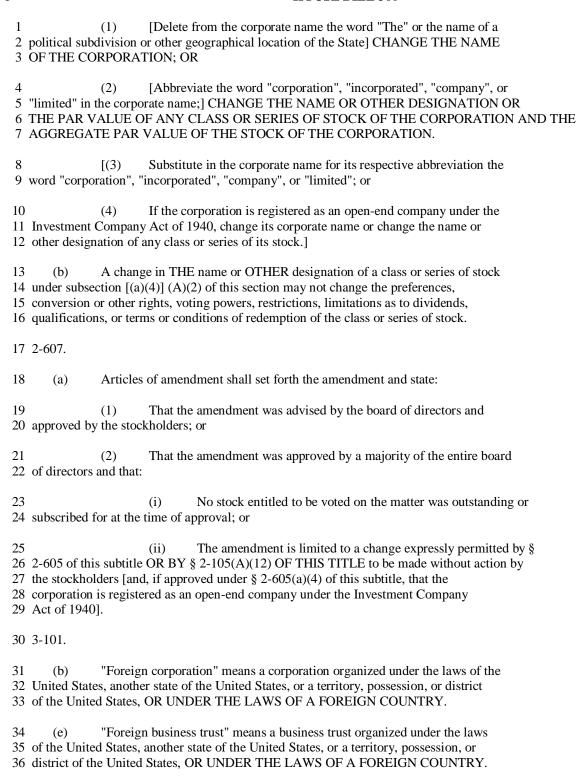
### 1 **Article - Corporations and Associations** 2 2-105. 3 (a) A corporation may provide by its charter: For one or more classes of stock, the voting rights of each class, and 4 5 any restriction on or denial of these rights; As to each class of stock, either the par value of the shares or that the 6 7 shares are without par value; 8 (3)That the corporation shall set apart dividends for or pay 9 dividends to the holders of a specified class of stock before any dividends are set apart 10 for or paid to the holders of another class of stock; 11 (ii) The rate, amount, and time of payment of the dividends; and 12 Whether the dividends are cumulative, cumulative to a limited (iii) 13 extent, or noncumulative; 14 That any specified class of stock is preferred over another class as to 15 its distributive share of the assets on voluntary or involuntary liquidation of the corporation and the amount of the preference; 17 (5) That any specified class of stock may be redeemed at the option of the 18 corporation or of the holders of the stock and the terms and conditions of redemption, including the time and price of redemption; 20 (6)That any specified class of stock is convertible into shares of stock of 21 one or more other classes and the terms and conditions of conversion; 22 That the holders of any specified securities issued or to be issued by 23 the corporation have any voting or other rights which, by law, are or may be conferred 24 on stockholders; For any other preferences, rights, restrictions, including restrictions 25 26 on transferability, and qualifications not inconsistent with law; 27 That the board of directors may classify or reclassify any unissued 28 stock from time to time by setting or changing the preferences, conversion or other 29 rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms 30 or conditions of redemption of the stock; 31 (10)For any grant to the holders of the stock of the corporation, 32 including a specified class or series of stock, of the preemptive right to subscribe to: 33 1. Any or all additional issues of the stock; or

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Any securities of the corporation convertible into

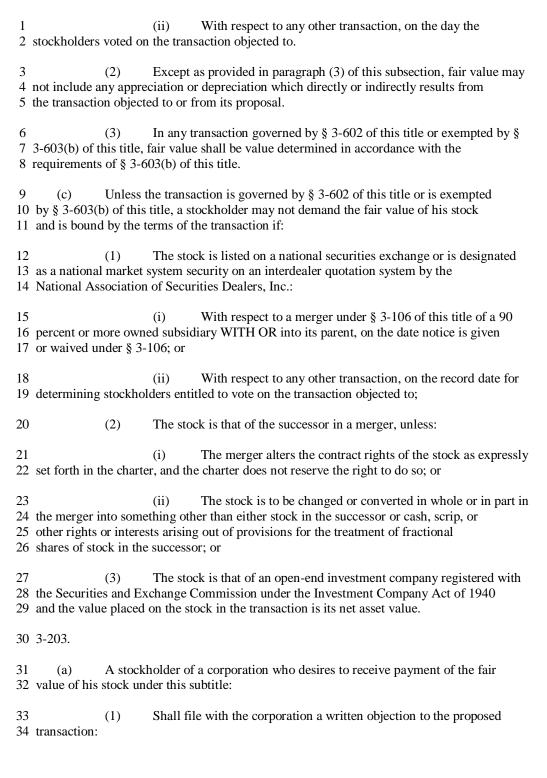
1 2	(ii) For any definition or limitation of the preemptive rights of stockholders to acquire additional stock or securities in the corporation; [and]			
3 4	(11) For restrictions on transferability for any purpose, including restrictions designed to permit a corporation to qualify as:			
5 6	(i) A real estate investment trust under the Internal Revenue Code or regulations adopted under the Internal Revenue Code; or			
7 8	(ii) An investment company under the Investment Company Act of 1940 or regulations adopted under the Investment Company Act of 1940; AND			
11 12	(12) THAT THE BOARD OF DIRECTORS, WITH THE APPROVAL OF A MAJORITY OF THE ENTIRE BOARD, AND WITHOUT ACTION BY THE STOCKHOLDERS, MAY AMEND THE CHARTER TO INCREASE OR DECREASE THE AGGREGATE NUMBER OF SHARES OF STOCK OF THE CORPORATION OR THE NUMBER OF SHARES OF STOCK OF ANY CLASS THAT THE CORPORATION HAS AUTHORITY TO ISSUE.			
16 17 18 19 20 21	(c) [The] NOTWITHSTANDING SUBSECTION (A)(12) OF THIS SECTION, THE board of directors of a corporation that is registered or intends to register as an open-end company under the Investment Company Act of 1940, after the registration as an open-end company takes effect, may increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class that the corporation has authority to issue, unless a provision has been included in the charter of the corporation after July 1, 1987 prohibiting an action by the board of directors to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class that the corporation has authority to issue.			
23	2-306.			
	(a) Unless the charter provides otherwise, if stated capital is reduced by retiring stock held by the corporation, the board of directors may approve the reduction without stockholder action.			
29	(b) (1) Except as provided in subsection (a) of this section OR IN § 2-605 OF THIS TITLE, a reduction of stated capital of a corporation, whether to be effected with or without a charter amendment, shall be approved in the manner provided in this subsection.			
31	(2) The board of directors shall:			
32 33	(i) Adopt a resolution which declares that the charter amendment, if any, and the proposed reduction is advisable; and			
	(ii) Direct that the proposed reduction and any charter amendment be submitted for consideration at either an annual or special meeting of the stockholders.			





1 3-106.

- 2 (a) Notwithstanding the provisions of § 3-105 of this subtitle, the merger of a 3 90 percent or more owned subsidiary corporation WITH OR into its parent corporation 4 may be effected as provided in this section[,] if:
- 5 (1) [the] THE charter of the [parent] SUCCESSOR is not amended in the 6 merger OTHER THAN TO CHANGE ITS NAME, THE NAME OR OTHER DESIGNATION OR 7 THE PAR VALUE OF ANY CLASS OR SERIES OF ITS STOCK, OR THE AGGREGATE PAR 8 VALUE OF ITS STOCK: AND
- 9 (2) THE CONTRACT RIGHTS OF ANY STOCK OF THE SUCCESSOR ISSUED 10 IN THE MERGER IN EXCHANGE FOR STOCK OF THE PARENT CORPORATION ARE 11 IDENTICAL TO THE CONTRACT RIGHTS OF THE STOCK FOR WHICH THE STOCK OF
- 12 THE SUCCESSOR WAS EXCHANGED.
- 13 (b) For the purposes of this section, a subsidiary is considered to be 90 percent 14 or more owned if the parent corporation owns shares entitled to cast 90 percent or 15 more of all the votes entitled to be cast of each group or class of shares entitled to vote 16 as a group or class on the merger.
- 17 (c) (1) The board of directors of each Maryland corporation proposing to 18 become a party to the merger shall adopt a resolution which approves the proposed 19 merger on substantially the terms and conditions set forth or referred to in the
- 20 resolution. The approval shall be by a majority vote of the entire board of directors. A
- 21 meeting of the stockholders is not necessary.
- 22 (2) If a foreign corporation is a party to the articles, the transaction shall 23 be advised, authorized, and approved by the corporation in the manner and by the 24 vote required by its charter and the laws of the place where it is organized.
- 25 (d) (1) Unless waived by all minority stockholders, at least 30 days before 26 the articles are filed with the Department, a parent corporation which owns less than 27 all of the outstanding stock of the subsidiary shall give notice of the transaction to 28 each of the subsidiary's minority stockholders of record on the date of giving of the 29 notice or on a record date fixed for that purpose which is not more than 10 days before
- 29 notice or on a record date fixed for that purpose which is not more than 10 days before
- 30 the date of giving notice.
- 31 (2) A minority stockholder of the subsidiary has the right to demand and 32 receive payment of the fair value of his stock as provided in Subtitle 2 of this title 33 relating to objecting stockholders.
- 34 3-202.
- 35 (b) (1) Fair value is determined as of the close of business:
- 36 (i) With respect to a merger under § 3-106 of this title of a 90 37 percent or more owned subsidiary WITH OR into its parent, on the day notice is given
- 38 or waived under § 3-106; or



	percent or more own is given or waived un		With respect to a merger under § 3-106 of this title of a 90 ary WITH OR into its parent, within 30 days after notice 06; or	
4 5	stockholders' meeting	(ii) g at which	With respect to any other transaction, at or before the the transaction will be considered;	
6	(2)	May not	vote in favor of the transaction; and	
	(3) Within 20 days after the Department accepts the articles for record, shall make a written demand on the successor for payment for his stock, stating the number and class of shares for which he demands payment.			
10	8-202.			
13 14 15	(c) Notwithstanding any provision of this title which requires for any action the concurrence of a greater proportion of the votes than a majority of the votes entitled to be cast, a real estate investment trust may provide by its declaration of trust that the action may be taken or authorized on the concurrence of a GREATER OR smaller proportion, but not less than a majority of the number of votes entitled to be cast on the matter.			
17	8-501.			
18 19			ed in § 8-202(c) or § 8-203(a)(7) of this title, a declaration as provided in this section.	
20 21	(b) The box amendment to its de		stees of a real estate investment trust proposing an of trust shall:	
22 23	(1) declares that it is ad-		resolution which sets forth the proposed amendment and ad	
24 25	` /		nat the proposed amendment be submitted for consideration al meeting of BY the shareholders.	
28	(c) (1) [Notice] IF THE PROPOSED AMENDMENT IS TO BE CONSIDERED AT A MEETING OF THE SHAREHOLDERS, NOTICE which states that a purpose of the meeting will be to act upon the proposed amendment shall be given by the real estate investment trust in the manner required by its declaration of trust or bylaws to:			
30 31	and	(i)	Each shareholder entitled to vote on the proposed amendment;	
	amendment if the co		Each shareholder not entitled to vote on the proposed nts of the shareholder's shares, as expressly set forth in be altered by the amendment.	
35 36	(2) the changes it will a		ice shall include a copy of the amendment or a summary of	

- 1 (d) The proposed amendment shall be approved by the shareholders of the real
- 2 estate investment trust by the affirmative vote OR WRITTEN CONSENT of two thirds
- 3 of all the votes entitled to be cast on the matter.
- 4 (e) A declaration of trust may permit:
- 5 (1) [the] THE BOARD OF trustees [by a two-thirds vote], WITH THE
- 6 APPROVAL OF TWO THIRDS OF ITS MEMBERS, AND WITHOUT ACTION BY THE
- 7 SHAREHOLDERS, to amend [provisions of] the declaration of trust from time to time
- 8 to qualify as a real estate investment trust under the Internal Revenue Code or under
- 9 this title; AND
- 10 (2) A MAJORITY OF THE ENTIRE BOARD OF TRUSTEES. WITHOUT ACTION
- 11 BY THE SHAREHOLDERS, TO AMEND THE DECLARATION OF TRUST IN ANY RESPECT
- 12 IN WHICH THE CHARTER OF A CORPORATION MAY BE AMENDED PURSUANT TO §
- 13 2-605 OF THIS ARTICLE.
- 14 (f) Articles of amendment, setting forth the amendment and stating the
- 15 manner in which it was approved, shall be signed and acknowledged by at least a
- 16 majority of the trustees, or an officer duly authorized by at least a majority of the
- 17 trustees, and filed with the Department.
- 18 8-501.1.
- 19 (a) "Foreign business trust" means a business trust organized under the
- 20 laws of the United States, another state of the United States, or a territory,
- 21 possession, or district of the United States, OR UNDER THE LAWS OF A FOREIGN
- 22 COUNTRY.
- 23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 24 October 1, 1998.