

(PRE-FILED)

By: **Delegate Arnick**
Requested: August 17, 2001
Introduced and read first time: January 9, 2002
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Associations - Derivative Actions**

3 FOR the purpose of prohibiting a stockholder of a corporation from commencing a
4 stockholder's derivative action until a written demand has been made on the
5 corporation to take suitable action and a certain number of days have expired
6 from the date the demand was made; providing certain exceptions to the
7 requirement to wait a certain number of days before commencing a stockholder's
8 derivative action; requiring a court to dismiss a derivative action brought by a
9 stockholder under certain circumstances; repealing certain provisions of law
10 that establish when a member of a limited liability company or partner in a
11 limited partnership may bring a derivative action and that establish
12 requirements for complaints filed in the action; defining a certain term;
13 providing for the application of this Act; and generally relating to derivative
14 actions.

15 BY adding to
16 Article - Corporations and Associations
17 Section 2-515
18 Annotated Code of Maryland
19 (1999 Replacement Volume and 2001 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article - Corporations and Associations
22 Section 4A-801 and 10-1001
23 Annotated Code of Maryland
24 (1999 Replacement Volume and 2001 Supplement)

25 BY repealing
26 Article - Corporations and Associations
27 Section 4A-803 and 10-1003
28 Annotated Code of Maryland
29 (1999 Replacement Volume and 2001 Supplement)

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

3 **Article - Corporations and Associations**

4 2-515.

5 (A) IN THIS SECTION, "STOCKHOLDER" INCLUDES A BENEFICIAL OWNER
6 WHOSE SHARES OF STOCK ARE HELD IN A VOTING TRUST OR BY A NOMINEE ON
7 BEHALF OF THE BENEFICIAL OWNER.

8 (B) A STOCKHOLDER OF A CORPORATION MAY NOT COMMENCE A
9 STOCKHOLDER'S DERIVATIVE ACTION UNTIL:

10 (1) A WRITTEN DEMAND HAS BEEN MADE ON THE CORPORATION TO
11 TAKE SUITABLE ACTION; AND

12 (2) 90 DAYS HAVE EXPIRED FROM THE DATE THE DEMAND WAS MADE
13 UNLESS:

14 (I) THE STOCKHOLDER HAS BEEN NOTIFIED BEFORE THE
15 EXPIRATION OF THE 90-DAY PERIOD THAT THE DEMAND HAS BEEN REJECTED BY
16 THE CORPORATION; OR

17 (II) IRREPARABLE INJURY TO THE CORPORATION WOULD RESULT
18 BY WAITING FOR THE EXPIRATION OF THE 90-DAY PERIOD.

19 (C) ON MOTION BY THE CORPORATION, THE COURT SHALL DISMISS A
20 STOCKHOLDER'S DERIVATIVE ACTION IF THE BOARD OF DIRECTORS, OR AN
21 INDEPENDENT LEGAL COUNSEL APPOINTED BY THE BOARD, DETERMINES IN GOOD
22 FAITH, AFTER CONDUCTING A REASONABLE INQUIRY, THAT MAINTENANCE OF THE
23 ACTION IS NOT IN THE BEST INTERESTS OF THE CORPORATION.

24 4A-801.

25 (a) A member may bring a derivative action to enforce a right of a limited
26 liability company to recover a judgment in its favor to the same extent that a
27 stockholder may bring an action for a derivative suit under the corporation law of
28 Maryland.

29 (b) [An action under this subtitle may be brought if members with authority
30 to bring the action have refused to bring the action or if an effort to cause those
31 members to bring the action is not likely to succeed.

32 (c) If it appears that the plaintiff does not fairly and adequately represent the
33 interests of the members in enforcing the right of the limited liability company, the
34 derivative action may not be maintained.

1 [4A-803.

2 In a derivative action, the complaint shall set forth with particularity the
3 attempts, if any, of the plaintiff to secure initiation of the action the plaintiff desires
4 by the limited liability company or the reasons for not making the effort.]

5 10-1001.

6 A limited partner may bring a derivative action to enforce a right of a limited
7 partnership to recover a judgment in its favor to the same extent that a stockholder
8 may bring an action for a derivative suit under the corporation law of Maryland.
9 [Such an action may be brought if general partners with authority to do so have
10 refused to bring the action or if an effort to cause those general partners to bring the
11 action is not likely to succeed.] The derivative action may not be maintained if it
12 appears that the plaintiff does not fairly and adequately represent the interests of the
13 limited partners in enforcing the right of the limited partnership.

14 [10-1003.

15 In a derivative action, the complaint shall set forth with particularity the
16 attempts, if any, of the plaintiff to secure initiation of the action the plaintiff desires
17 by a general partner or the reasons for not making the effort.]

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to
19 derivative actions brought on or after the effective date of this Act.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2002.