

HOUSE BILL 471

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2003 Regular Session
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By: **Delegate Doory**

Introduced and read first time: February 5, 2003

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations - Miscellaneous Provisions**

3 FOR the purpose of providing that stock issued prior to the time the articles
4 supplementary with respect to the stock are effective shall cease to be voidable
5 at the time the articles supplementary become effective; providing that a right
6 or liability accrued by reason of the issuance of the stock prior to the time the
7 articles supplementary are effective shall be extinguished at the time the
8 articles supplementary become effective under certain circumstances; clarifying
9 that a direct or indirect transfer of money or other property of a corporation in
10 respect of any of its shares is a distribution; authorizing the board of directors of
11 a corporation to delegate to a committee of the board or an officer of the
12 corporation the power to fix the amount and other terms of a distribution under
13 certain circumstances; altering certain notice requirements with respect to
14 certain parent and subsidiary mergers; clarifying that certain stockholders
15 retain their appraisal rights under certain circumstances; making certain
16 stylistic, conforming, and technical changes; and generally relating to Maryland
17 corporations.

18 BY repealing and reenacting, with amendments,
19 Article - Corporations and Associations
20 Section 2-208, 2-208.1, 2-301(a), 2-407(a), 2-411(a), 3-106(d), and 3-202(c)
21 Annotated Code of Maryland
22 (1999 Replacement Volume and 2002 Supplement)

23 BY adding to
24 Article - Corporations and Associations
25 Section 2-309(c)
26 Annotated Code of Maryland
27 (1999 Replacement Volume and 2002 Supplement)

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

Article - Corporations and Associations

2 2-208.

3 (a) (1) If, under a power contained in the charter, the board of directors
4 classifies or reclassifies any unissued stock by setting or changing the preferences,
5 conversion or other rights, voting powers, restrictions, limitations as to dividends,
6 qualifications, or terms or conditions of redemption, the board shall file articles
7 supplementary for record with the Department.

8 (2) The board may not issue any of the stock that is classified or
9 reclassified prior to the time the articles supplementary are effective, as provided in
10 this section.

11 (b) Articles supplementary shall include:

12 (1) A description of the stock, including the preferences, conversion and
13 other rights, voting powers, restrictions, limitations as to dividends, qualifications,
14 and terms and conditions of redemption, as set or changed by the board of directors;
15 and

16 (2) A statement that the stock has been classified or reclassified by the
17 board of directors under the authority contained in the charter.

18 (c) Articles supplementary shall be executed in the manner required by Title 1
19 of this article.

20 (d) Articles supplementary are effective as of the later of:

21 (1) The time the Department accepts the articles for record; or

22 (2) The time established under the articles, not to exceed 30 days after
23 the articles are accepted for record.

24 (E) NOTWITHSTANDING SUBSECTION (A)(2) OF THIS SECTION:

25 (1) THE STOCK ISSUED BY A CORPORATION PRIOR TO THE TIME THE
26 ARTICLES SUPPLEMENTARY WITH RESPECT TO THE STOCK ARE EFFECTIVE SHALL
27 CEASE TO BE VOIDABLE AS A RESULT OF THE FAILURE TO FILE THE ARTICLES
28 SUPPLEMENTARY AT THE TIME THE ARTICLES SUPPLEMENTARY BECOME
29 EFFECTIVE; AND

30 (2) A RIGHT OR LIABILITY ACCRUED BY REASON OF THE ISSUANCE OF
31 STOCK BY A CORPORATION PRIOR TO THE TIME THE ARTICLES SUPPLEMENTARY
32 WITH RESPECT TO THE STOCK ARE EFFECTIVE SHALL BE EXTINGUISHED AT THE
33 TIME THE ARTICLES SUPPLEMENTARY BECOME EFFECTIVE, EXCEPT TO THE EXTENT
34 THAT THE PERSON HAVING THE RIGHT OR LIABILITY HAS ACTED DETRIMENTALLY
35 IN RELIANCE ON THE RIGHT OR LIABILITY SOLELY BY REASON OF ISSUANCE OF THE
36 STOCK.

1 2-208.1.

2 (a) (1) If the board of directors of a corporation registered as an open-end
3 company under the Investment Company Act of 1940 increases or decreases the
4 aggregate number of shares of stock or the number of shares of stock of any class that
5 the corporation has authority to issue in accordance with § 2-105(c) of this title, the
6 board shall file articles supplementary for record with the Department.

7 (2) The board may not issue any of the newly authorized stock prior to
8 the time the articles supplementary are effective, as provided in this section.

9 (b) Articles supplementary shall include:

10 (1) Both as of immediately before the increase or decrease and as
11 increased or decreased:

12 (i) The total number of shares of stock of all classes that the
13 corporation has authority to issue;

14 (ii) The number of shares of stock of each class;

15 (iii) The par value of the shares of stock of each class or a statement
16 that the shares are without par value; and

17 (iv) If there are any shares of stock with par value, the aggregate
18 par value of all the shares of all classes;

19 (2) A statement that the corporation is registered as an open-end
20 company under the Investment Company Act of 1940; and

21 (3) A statement that the total number of shares of capital stock that the
22 corporation has authority to issue has been increased or decreased by the board of
23 directors in accordance with § 2-105(c) of this title.

24 (c) Articles supplementary shall be executed in the manner required by Title 1
25 of this article.

26 (d) Articles supplementary are effective as of the later of:

27 (1) The time the Department accepts the articles for record; or

28 (2) The time established under the articles, not to exceed 30 days after
29 the articles are accepted for record.

30 (E) NOTWITHSTANDING SUBSECTION (A)(2) OF THIS SECTION:

31 (1) THE STOCK ISSUED BY A CORPORATION PRIOR TO THE TIME THE
32 ARTICLES SUPPLEMENTARY WITH RESPECT TO THE STOCK ARE EFFECTIVE SHALL
33 CEASE TO BE VOIDABLE AS A RESULT OF THE FAILURE TO FILE THE ARTICLES
34 SUPPLEMENTARY AT THE TIME THE ARTICLES SUPPLEMENTARY BECOME
35 EFFECTIVE; AND

1 (2) A RIGHT OR LIABILITY ACCRUED BY REASON OF THE ISSUANCE OF
2 STOCK BY A CORPORATION PRIOR TO THE TIME THE ARTICLES SUPPLEMENTARY
3 WITH RESPECT TO THE STOCK ARE EFFECTIVE SHALL BE EXTINGUISHED AT THE
4 TIME THE ARTICLES SUPPLEMENTARY BECOME EFFECTIVE, EXCEPT TO THE EXTENT
5 THAT THE PERSON HAVING THE RIGHT OR LIABILITY HAS ACTED DETRIMENTALLY
6 IN RELIANCE ON THE RIGHT OR LIABILITY SOLELY BY REASON OF ISSUANCE OF THE
7 STOCK.

8 2-301.

9 (a) (1) In this [subtitle] SUBTITLE, "distribution" means:

10 [(1)] (I) A direct or indirect transfer of money or other property OF THE
11 CORPORATION IN RESPECT OF ANY OF ITS SHARES[, except a corporation's own
12 shares declared or paid as a stock dividend or stock split]; or

13 [(2)] (II) An incurrence or forgiveness of indebtedness by a corporation to
14 or for the benefit of the corporation's stockholders in respect of any of its shares.

15 (2) "DISTRIBUTION" DOES NOT INCLUDE A STOCK DIVIDEND OR STOCK
16 SPLIT AUTHORIZED IN ACCORDANCE WITH § 2-309(B) OF THIS SUBTITLE.

17 2-309.

18 (C) IF THE BOARD OF DIRECTORS OF A CORPORATION HAS GIVEN GENERAL
19 AUTHORIZATION FOR A DISTRIBUTION AND PROVIDES FOR OR ESTABLISHES A
20 METHOD OR PROCEDURE FOR DETERMINING THE MAXIMUM AMOUNT OF THE
21 DISTRIBUTION, THE BOARD MAY DELEGATE TO A COMMITTEE OF THE BOARD OR AN
22 OFFICER OF THE CORPORATION THE POWER, IN ACCORDANCE WITH THE GENERAL
23 AUTHORIZATION, TO FIX THE AMOUNT AND OTHER TERMS OF THE DISTRIBUTION.

24 2-407.

25 (a) (1) Except as provided in paragraph (2) of this subsection AND EXCEPT
26 FOR A CORPORATION THAT HAS ELECTED TO BECOME SUBJECT TO § 3-804(C) OF THIS
27 ARTICLE, the stockholders may elect a successor to fill a vacancy on the board of
28 directors which results from the removal of a director.

29 (2) If the stockholders of any class or series are entitled separately to
30 elect one or more directors, the stockholders of that class or series may elect a
31 successor to fill a vacancy on the board of directors which results from the removal of
32 a director elected by that class or series.

33 2-411.

34 (a) The board of directors of a corporation may:

35 (1) Appoint from among its members an executive committee and other
36 committees composed of one or more directors; and

1 (2) Delegate to these committees any of the powers of the board of
2 directors, except the power to:

3 (i) Authorize dividends on stock, EXCEPT AS PROVIDED IN §
4 2-309(C) OF THIS TITLE;

5 (ii) Issue stock other than as provided in subsection (b) of this
6 section;

7 (iii) Recommend to the stockholders any action which requires
8 stockholder approval;

9 (iv) Amend the bylaws; or

10 (v) Approve any merger or share exchange which does not require
11 stockholder approval.

12 3-106.

13 (d) (1) [If the parent and subsidiary are both Maryland corporations, and
14 unless] UNLESS waived by all [minority] stockholders WHO, EXCEPT FOR THE
15 APPLICATION OF THIS SECTION, WOULD BE ENTITLED TO VOTE ON THE MERGER, at
16 least 30 days before the articles are filed with the Department, a parent corporation
17 which owns less than all of the outstanding stock of the subsidiary [shall give] AS OF
18 IMMEDIATELY BEFORE THE EFFECTIVE TIME OF THE MERGER MUST HAVE GIVEN
19 notice of the transaction to each of the subsidiary's [minority] stockholders of record
20 WHO, EXCEPT FOR THE APPLICATION OF THIS SECTION, WOULD BE ENTITLED TO
21 VOTE ON THE MERGER on the date of giving of the notice or on a record date fixed for
22 that purpose which is not more than 10 days before the date of giving notice.

23 (2) A minority stockholder of the subsidiary has the right to demand and
24 receive payment of the fair value of [his] THE MINORITY STOCKHOLDER'S stock as,
25 AND TO THE EXTENT, provided in Subtitle 2 of this title relating to objecting
26 stockholders.

27 3-202.

28 (c) Unless the transaction is governed by § 3-602 of this title or is exempted
29 by § 3-603(b) of this title, a stockholder may not demand the fair value of the
30 stockholder's stock and is bound by the terms of the transaction if:

31 (1) The stock is listed on a national securities exchange, is designated as
32 a national market system security on an interdealer quotation system by the National
33 Association of Securities Dealers, Inc., or is designated for trading on the NASDAQ
34 Small Cap Market:

35 (i) With respect to a merger under § 3-106 of this title of a 90
36 percent or more owned subsidiary with or into its parent corporation, on the date
37 notice is given or waived under § 3-106; or

1 (ii) With respect to any other transaction, on the record date for
2 determining stockholders entitled to vote on the transaction objected to;

3 (2) The stock is that of the successor in a merger, unless:

4 (i) The merger alters the contract rights of the stock as expressly
5 set forth in the charter, and the charter does not reserve the right to do so; or

6 (ii) The stock is to be changed or converted in whole or in part in
7 the merger into something other than either stock in the successor or cash, scrip, or
8 other rights or interests arising out of provisions for the treatment of fractional
9 shares of stock in the successor;

10 (3) The stock is not entitled, OTHER THAN SOLELY BECAUSE OF § 3-106
11 OF THIS TITLE, to be voted on the transaction or the stockholder did not own the
12 shares of stock on the record date for determining stockholders entitled to vote on the
13 transaction;

14 (4) The charter provides that the holders of the stock are not entitled to
15 exercise the rights of an objecting stockholder under this subtitle; or

16 (5) The stock is that of an open-end investment company registered with
17 the Securities and Exchange Commission under the Investment Company Act of 1940
18 and the value placed on the stock in the transaction is its net asset value.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 June 1, 2003.