

HOUSE BILL 1234

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By: **Delegate Feldman**

Introduced and read first time: February 21, 2007

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland General Corporation Law – Altering Corporate Procedures**

3 FOR the purpose of repealing certain provisions requiring a corporation to give
4 uniform written notice of a call for payment on subscriptions; clarifying that
5 stockholders only have preemptive rights, for a corporation formed on or after a
6 certain date, if the charter expressly provides for them; repealing a certain
7 provision requiring a corporation to send certain information to a stockholder at
8 a certain time; requiring a corporation to send certain information to a
9 stockholder on request; clarifying that notice shall be sent without charge to the
10 stockholder; clarifying that a certain resignation is enforceable; authorizing the
11 board of directors of a corporation to delegate power to a certain committee to
12 recommend the election of directors to stockholders; authorizing the board of
13 directors of a corporation to authorize a certain committee to establish a method
14 or procedure for determining the maximum aggregate offering price of shares to
15 be issued; adding limited liability companies and managers of limited liability
16 companies to a certain definition; repealing certain requirements imposed on
17 making payments of expenses for indemnification of a director; expanding a
18 certain notice provision to a broader class of stockholders; establishing that the
19 presence of a certain number of votes at a meeting of stockholders of a certain
20 type of corporation constitutes a quorum; authorizing a corporation to hold its
21 annual meeting at any time provided in the bylaws; making certain stylistic
22 changes; and generally relating to the law of corporations and associations.

23 BY repealing and reenacting, with amendments,
24 Article – Corporations and Associations

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 2–202, 2–205, 2–210(c), 2–406, 2–411(a), 2–418(a)(1), (e), and (f),
 2 2–501(c), 2–505(b), and 2–506
 3 Annotated Code of Maryland
 4 (1999 Replacement Volume and 2006 Supplement)

5 BY adding to
 6 Article – Corporations and Associations
 7 Section 3–109(e)
 8 Annotated Code of Maryland
 9 (1999 Replacement Volume and 2006 Supplement)

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

12 **Article – Corporations and Associations**

13 2–202.

14 (a) A subscription for stock of a corporation which is not yet formed is
 15 irrevocable for a period of [three] **3** months, unless:

16 (1) The subscription agreement provides otherwise; or

17 (2) Every subscriber consents to the revocation of the subscription.

18 (b) Unless the subscription agreement provides otherwise, a subscription is
 19 not void or unenforceable solely because less than all of the authorized stock is
 20 subscribed for.

21 (c) [(1)] Unless the subscription agreement provides otherwise, a
 22 subscription for stock, whether made before or after the corporation is formed, shall be
 23 paid in full or in installments at the times set by the board of directors.

24 [(2)] The corporation shall give at least ten days written notice of the
 25 amount, time, and place of payment to each subscriber at his address as it appears on
 26 the records of the corporation.

27 (3) Any call made by the board of directors for payment on
 28 subscriptions shall be uniform as to all stock of the same class.]

29 2–205.

1 (a) [Unless] **FOR A CORPORATION INCORPORATED ON OR AFTER**
2 **OCTOBER 1, 1995, UNLESS** the charter expressly grants such rights to the
3 stockholder, a stockholder does not have any preemptive right to subscribe to:

4 (1) Any additional issue of stock; or

5 (2) Any security convertible into an additional issue of stock.

6 (b) **FOR A CORPORATION INCORPORATED BEFORE OCTOBER 1, 1995, A**
7 **STOCKHOLDER SHALL HAVE PREEMPTIVE RIGHTS AS AND TO THE EXTENT IN**
8 **EXISTENCE BEFORE OCTOBER 1, 1995, UNLESS AND UNTIL EXPRESSLY**
9 **CHANGED OR TERMINATED BY CHARTER AMENDMENT.**

10 (c) (1) A stockholder to whom a preemptive right has been granted may
11 waive the preemptive right.

12 (2) A written waiver of a preemptive right is irrevocable even though
13 it is not supported by consideration.

14 2-210.

15 (c) Unless the charter or bylaws provide otherwise, the board of directors of a
16 corporation may authorize the issue of some or all of the shares of any or all of its
17 classes or series without certificates. The authorization does not affect shares already
18 represented by certificates until they are surrendered to the corporation. [At the time
19 of issue or transfer of] **FOR** shares **ISSUED** without certificates, **ON REQUEST BY A**
20 **STOCKHOLDER**, the corporation shall send the stockholder, **WITHOUT CHARGE**, a
21 written statement of the information required on certificates by § 2-211 of this
22 subtitle.

23 2-406.

24 (a) The stockholders of a corporation may remove any director, with or
25 without cause, by the affirmative vote of a majority of all the votes entitled to be cast
26 generally for the election of directors, except:

27 (1) As provided in subsection (b) of this section;

28 (2) As otherwise provided in the charter of the corporation; or

29 (3) For a corporation that has elected to be subject to § 3-804(a) of this
30 article.

1 (b) Unless the charter of the corporation provides otherwise:

2 (1) If the stockholders of any class or series are entitled separately to
3 elect one or more directors, a director elected by a class or series may not be removed
4 without cause except by the affirmative vote of a majority of all the votes of that class
5 or series;

6 (2) If a corporation has cumulative voting for the election of directors
7 and less than the entire board is to be removed, a director may not be removed without
8 cause if the votes cast against [his] **THE DIRECTOR'S** removal would be sufficient to
9 elect [him] **THE DIRECTOR** if then cumulatively voted at an election of the entire
10 board of directors, or, if there is more than one class of directors, at an election of the
11 class of directors of which [he] **THE DIRECTOR** is a member; and

12 (3) If the directors have been divided into classes, a director may not
13 be removed without cause.

14 (c) **A RESIGNATION OF A DIRECTOR GIVEN IN WRITING OR BY**
15 **ELECTRONIC TRANSMISSION MAY PROVIDE THAT:**

16 (1) **IT WILL BE EFFECTIVE AT A LATER TIME OR ON THE**
17 **OCCURRENCE OF AN EVENT; AND**

18 (2) **IT IS IRREVOCABLE ON THE OCCURRENCE OF THE EVENT.**

19 2-411.

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

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

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

25 (i) Authorize dividends on stock, except as provided in §
26 2-309(d) of this title;

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

1 (iii) Recommend to the stockholders any action which requires
2 stockholder approval, **OTHER THAN THE ELECTION OF DIRECTORS**;

3 (iv) Amend the bylaws; or

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

6 2-418.

7 (a) (1) "Director" means any person who is or was a director of a
8 corporation and any person who, while a director of a corporation, is or was serving at
9 the request of the corporation as a director, officer, partner, trustee, employee,
10 **MANAGER**, or agent of another foreign or domestic corporation, partnership, joint
11 venture, trust, **LIMITED LIABILITY COMPANY**, other enterprise, or employee benefit
12 plan.

13 (e) (1) Indemnification under subsection (b) of this section may not be
14 made by the corporation unless authorized for a specific proceeding after a
15 determination has been made that indemnification of the director is permissible in the
16 circumstances because the director has met the standard of conduct set forth in
17 subsection (b) of this section.

18 (2) Such determination shall be made:

19 (i) By the board of directors by a majority vote of a quorum
20 consisting of directors not, at the time, parties to the proceeding, or, if such a quorum
21 cannot be obtained, then by a majority vote of a committee of the board consisting
22 solely of one or more directors not, at the time, parties to such proceeding and who
23 were duly designated to act in the matter by a majority vote of the full board in which
24 the designated directors who are parties may participate;

25 (ii) By special legal counsel selected by the board of directors or
26 a committee of the board by vote as set forth in subparagraph (i) of this paragraph, or,
27 if the requisite quorum of the full board cannot be obtained therefor and the
28 committee cannot be established, by a majority vote of the full board in which directors
29 who are parties may participate; or

30 (iii) By the stockholders.

31 (3) Authorization of indemnification and determination as to
32 reasonableness of expenses shall be made in the same manner as the determination

1 that indemnification is permissible. However, if the determination that
2 indemnification is permissible is made by special legal counsel, authorization of
3 indemnification and determination as to reasonableness of expenses shall be made in
4 the manner specified in [subparagraph (ii) of] paragraph [(2)] **(2)(II)** of this
5 subsection for selection of such counsel.

6 (4) Shares held by directors who are parties to the proceeding may not
7 be voted on the subject matter under this subsection.

8 (f) (1) Reasonable expenses incurred by a director who is a party to a
9 proceeding may be paid or reimbursed by the corporation in advance of the final
10 disposition of the proceeding upon receipt by the corporation of:

11 (i) A written affirmation by the director of the director's good
12 faith belief that the standard of conduct necessary for indemnification by the
13 corporation as authorized in this section has been met; and

14 (ii) A written undertaking by or on behalf of the director to
15 repay the amount if it shall ultimately be determined that the standard of conduct has
16 not been met.

17 (2) The undertaking required by [subparagraph (ii) of] paragraph [(1)]
18 **(1)(II)** of this subsection shall be an unlimited general obligation of the director but
19 need not be secured and may be accepted without reference to financial ability to make
20 the repayment.

21 (3) Payments under this subsection shall be made as provided by the
22 charter, bylaws, or contract or as specified in subsection [(e)] **(E)(2)** of this section.

23 2-501.

24 (c) (1) Except as provided in paragraph (2) of this subsection, the meeting
25 shall be held[:

26 (i) At] **AT** the time **OR IN THE MANNER** provided in the
27 bylaws[; or

28 (ii) If the bylaws specify a period not exceeding 31 days during
29 which the meeting may be held, at a time within that period set by the board of
30 directors].

1 (2) If a corporation is required under [paragraph (1) of] subsection
2 ~~[(b)] (B)(1)~~ of this section to hold a meeting of stockholders to elect directors, the
3 meeting shall be held no later than 120 days after the occurrence of the event
4 requiring the meeting.

5 2-505.

6 (b) (1) Unless the charter requires otherwise, the holders of any class of
7 stock, other than common stock entitled to vote generally in the election of directors,
8 may take action or consent to any action by delivering a consent in writing or by
9 electronic transmission of the stockholders entitled to cast not less than the minimum
10 number of votes that would be necessary to authorize or take the action at a
11 stockholders meeting if the corporation gives notice of the action to each holder of the
12 class of stock not later than 10 days after the effective time of the action.

13 (2) If authorized by the charter of a corporation, the holders of
14 common stock entitled to vote generally in the election of directors may take action or
15 consent to any action by delivering a consent in writing or by electronic transmission
16 of the stockholders entitled to cast not less than the minimum number of votes that
17 would be necessary to authorize or take the action at a stockholders meeting if the
18 corporation gives notice of the action **NOT LATER THAN 10 DAYS AFTER THE**
19 **EFFECTIVE DATE OF THE ACTION** to each holder of the class of common stock [not
20 later than 10 days after the effective date of the action] **AND TO EACH**
21 **STOCKHOLDER WHO, IF THE ACTION HAD BEEN TAKEN AT A MEETING, WOULD**
22 **HAVE BEEN ENTITLED TO NOTICE OF THE MEETING.**

23 2-506.

24 (a) Unless this article or the charter of a corporation provides otherwise, at a
25 meeting of stockholders:

26 (1) The presence in person or by proxy of stockholders entitled to cast
27 a majority of all the votes entitled to be cast at the meeting constitutes a quorum; and

28 (2) A majority of all the votes cast at a meeting at which a quorum is
29 present is sufficient to approve any matter which properly comes before the meeting.

30 (b) Subject to other provisions of this article, unless the charter of a
31 corporation provides otherwise, if two or more classes of stock are entitled to vote
32 separately on any matter for which this article requires approval by [two thirds]
33 **TWO-THIRDS** of all the votes entitled to be cast, the matter shall be approved by [two
34 thirds] **TWO-THIRDS** of all the votes of each class.

1 **(C) (1) THIS SUBSECTION APPLIES TO A CORPORATION:**

2 **(I) WITH A CLASS OF EQUITY SECURITIES REGISTERED**
3 **UNDER THE SECURITIES EXCHANGE ACT OF 1934 AND AT LEAST THREE**
4 **DIRECTORS WHO ARE NOT OFFICERS OR EMPLOYEES OF THE CORPORATION; OR**

5 **(II) REGISTERED AS AN OPEN-END INVESTMENT COMPANY**
6 **UNDER THE INVESTMENT COMPANY ACT OF 1940.**

7 **(2) UNLESS THE CHARTER OR THE BYLAWS PROVIDE OTHERWISE,**
8 **AT A MEETING OF STOCKHOLDERS THE PRESENCE, IN PERSON OR BY PROXY, OF**
9 **A MAJORITY OF ALL VOTES ENTITLED TO BE CAST AT THE MEETING**
10 **CONSTITUTES A QUORUM.**

11 **(3) UNDER THIS SECTION, A QUORUM PROVISION IN THE BYLAWS**
12 **MAY NOT BE LESS THAN ONE-THIRD OF THE VOTES ENTITLED TO BE CAST AT**
13 **THE MEETING.**

14 3-109.

15 **(E) ARTICLES OF CONSOLIDATION, MERGER, OR SHARE EXCHANGE MAY**
16 **PROVIDE:**

17 **(1) THE NUMBER AND NAMES OF THOSE DIRECTORS OR**
18 **TRUSTEES OF THE SUCCESSOR, OR PERSONS ACTING IN SIMILAR POSITIONS,**
19 **WHO WILL HOLD THOSE POSITIONS AS OF THE EFFECTIVE TIME OF THE**
20 **CONSOLIDATION, MERGER, OR SHARE EXCHANGE, IF THE PERSONS SERVING IN**
21 **THOSE POSITIONS WILL BE CHANGED IN THE CONSOLIDATION, MERGER, OR**
22 **SHARE EXCHANGE; AND**

23 **(2) THE TITLES AND NAMES OF ONE OR MORE OFFICERS OF THE**
24 **SUCCESSOR, OR PERSONS ACTING IN SIMILAR POSITIONS, WHO WILL HOLD**
25 **THOSE POSITIONS AS OF THE EFFECTIVE TIME OF THE CONSOLIDATION,**
26 **MERGER, OR SHARE EXCHANGE, IF THE PERSONS SERVING IN THE POSITIONS**
27 **WILL BE CHANGED IN THE CONSOLIDATION, MERGER, OR SHARE EXCHANGE.**

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 June 1, 2007.